Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 12-203

REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

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SUMMARY

The Commission's annual process of evaluating and reporting to Congress regarding the status of video competition is an important opportunity for critical examination and factual evaluation of industry developments and the effects of regulatory policies that affect the general public.

In these reply comments, the County provides detailed information to demonstrate the important role that its eleven local community media channels play in serving the local community's needs and interests. The County provides information about how funding to support local community media is distributed by function and program areas, statistical program data, and highlights noteworthy programming. Similar to other commercial television channels and networks, the County leverages its television content to provide Internet-based live streaming and video-on-demand.

The County rebuts industry suggestions that local community media programming requirements, commonly referred to in the industry as public access, educational and governmental access channels or PEG requirements, should be reduced. Localism is a cornerstone of communications policy in this nation, yet it is one that the Commission has not acted to improve or strengthen despite identifying a need to do so in its Broadcast Localism and Future of Media proceedings. The Commission should work to *expand* the means for the general public to receive local community information from multichannel programming distributors (MVPDs) not *reduce* support for local media.

The County further rebuts industry claims on the status of competition. The video services market is not "competitive" and further deregulation is not warranted. Nearly two decades after the Commission issued its First Video Competition Report, most consumers have a very limited choice of providers and the promised benefits of competition – particularly reduced

prices, still have not been realized. The County presents specific data regarding cable service and equipment rates that is consistent with the Commission's own findings as presented in the most recent Cable Pricing Order, *i.e.*, competition has resulted in higher, not lower rates.

- Since competition was introduced, the incumbent cable operator's standard cable rate has increased 22 percent and the competitors' standard rates have increased 40 percent and 63 percent.
- Equipment costs to view cable television on three television sets in a household increases the monthly bill by 20 percent, 30 percent or 70 percent, depending on the provider.

Montgomery County, which has one of the most "competitive" video service markets in the nation with three wireline providers, is still not realizing the full benefits of competition.

Montgomery County encourages the Commission to take meaningful regulatory action that will immediately benefit consumers, particularly by mandating an interim sale option for video equipment, updating its customer service standards, and requiring interactive programming guides to carry information about local community media channel programming.

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REPLY COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Montgomery County, Maryland hereby submits these reply comments in response to the above-captioned Notice of Inquiry ("Fifteenth NOI"), released July 20, 2012, seeking "data, information, and comment on the state of competition in the delivery of video programming" in order to provide data and respond to comments filed by other participants to make the following points: 1) the market for video services is not yet fully competitive, nor have consumers experienced the full benefits of competition that were anticipated; 2) local community media channels[1] serve an important role in meeting the Commission's localism policies and should be promoted and protected; and 3) there are several actions the Commission can and should take to improve video competition and consumer benefits.

I. INTRODUCTION

Nearly twenty years have passed since the Commission released its first report on video competition in September 1994.[2] At the time of the First Video Competition Report, the roll out

[1] These are public access, educational and governmental channels, commonly referred to in the industry as PEG channels.

[2] *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming),* First Report, CS Docket No. 94-48, 9 FCC Rcd 7442 (1994) ("First Video Competition Report").

of satellite services was just beginning and there were indications that telephone companies and other overbuilders would also enter the video services market. In the Commission's First Video Competition Report, it stated:

> Today, most local markets for multichannel video programming distribution services are supplied by monopoly cable systems. At present, competitive rivalry in most local multichannel video programming distribution markets is largely, often totally, insufficient to constrain the market power of incumbent cable systems.[3]

As will be described more fully in these comments, in some important ways, the Commission's statements remain as true today as they were in 1994 when the First Video Competition Report was issued. Although incumbent telephone companies have started offering video service in *selected* markets in recent years, wireline MVPD service remains a monopoly incumbent cable operator offering for most consumers. This situation is unlikely to change in the near future as the two major incumbent telephone companies offering video service, Verizon and AT&T, are nearing the end of their planned video service roll outs.[4]

Further, as we will show in more detail below, the competitive rivalry that does exist in any form (wireline or Direct Broadcast Service (DBS)) today has not brought the much anticipated consumer benefits of increased competition. In particular, competition has done little, if anything, to constrain prices. Reduced prices was one of the most important anticipated benefits for consumers and a principal rationale for the Commission's previous deregulatory actions and imposition of limitations on local regulatory authority.[5] Recent service innovations

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[3] First Video Competition Report at 7556.

[4] Verizon Comments at 4; NATOA Comments at 2.

[5] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television* Consumer *Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180, 22 FCC Rcd 5101 (rel. March 5, 2007) ("Local Franchising Order"), ¶ 2 ("We believe this competition for delivery of bundled services will benefit consumers by driving down prices and improving the quality of service offerings. We are

offer new options to consumers but they come with both costs and risks. In particular the tying of video services and broadband in bundled service packages further strengthens the hand of wireline providers in comparison with video only providers, including DBS providers (who by their own admission cannot offer comparable bundles) and online video distributors (OVDs) (who are reliant on the broadband network of the wireline provider to access their customers).

Given that deregulatory actions were taken to achieve competition and consumer benefits which in fact have not materialized, wireline industry calls for *more* deregulation miss the mark. Commission action to modernize regulations is needed; further deregulation is not. The County reiterates its requests from other proceedings for the Commission to take meaningful action in areas that can immediately benefit consumers. These include updating customer service rules, mandating an interim sale option for consumer equipment, and completing the All Vid and digital technical standards proceedings.[6]

Finally, while the County shares the Commission's enthusiasm for finding ways to spur new competitive offerings, localism need not be set aside to encourage new video competition. The Commission has long recognized that localism is a cornerstone of federal communications

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concerned, however, that traditional phone companies seeking to enter the video market face unreasonable regulatory obstacles, to the detriment of competition generally and cable subscribers in particular."); *See also id*. at ¶ 19 ("Most communities in the United States lack cable competition, which would reduce cable rates and increase innovation and quality of service. . . . In the vast majority of communities, cable competition simply does not exist"); *See also id*. at ¶ 36 ("Qwest commented that, in those communities it has not entered due to build-out requirements, consumers have been deprived of the likely benefit of lower prices as the result of competition from a second cable provider. This claim is supported by the Commission's 2005 annual cable price survey, in which the Commission observed that average monthly cable rates varied markedly depending on the presence – and type – of MVPD competition in the local market. The greatest difference occurred where there was wireline overbuild competition, where average monthly cable rates were 20.6 percent lower than the average for markets deemed noncompetitive.")

[6] *In the Matter of Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, MB Docket No. 10-91, CS Docket 97-80, PP Docket 00-67, FCC 10-60 (rel. April 21, 2010); ("All Vid Inquiry").

policy.[7] And, localism is the hallmark of public interest media. As the County will show in its own community, local community media programming is one of the most important elements of localism and should be both protected and promoted. Thus, the Commission should be wary of granting the benefits of MVPD status to "new" entrants – particularly those that are existing MVPDs offering an OVD service as well – without requiring them to share in the public interest obligation to promote localism in media.

II. LOCAL COMMUNITY MEDIA CHANNELS ARE A CORNERSTONE OF THE COMMUNITY IN MONTGOMERY COUNTY

A. MONTGOMERY COUNTY IS A GEOGRAPHICALLY, ECONOMICALLY, AND ETHNICALLY DIVERSE COMMUNITY

As a local franchise authority, Montgomery County must balance the interests of rural and urban population centers, high income and low income residents, and an ethnically diverse population. Montgomery County is a 496-square mile jurisdiction adjacent to Washington, DC with a population of 971,777.[8] The County includes density populated urban and suburban communities, as well as low density exurban and rural communities.[9] Although home to

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[7] *In the Matter of Broadcast Localism*, MB Docket No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425 (re. July 1, 2004) ("As with competition and diversity, localism has been a cornerstone of broadcast regulation for decades. Broadcasters, who are temporary trustees of the public's airwaves, must use the medium to serve the public interest, and the Commission has consistently interpreted this to mean that licensees must air programming that is responsive to the interests and needs of their communities of license. Even as the Commission deregulated many behavioral rules for broadcasters in the 1980s, it did not deviate from the notion that they must serve their local communities." (footnotes omitted).

[8] Montgomery County is the 42nd largest county in America and 42 percent of the American population lives within the largest 100 U.S. counties. 2010 U.S Census data compiled at http://en.wikipedia.org/wiki/List_of_the_most_populous_counties_in_the_United_States (last visited October 10, 2012).

[9] There are 45 "planning places" within the County. As of 2010, 39 percent of the County's residents live within the top five planning places and 64 percent are concentrated within the top ten planning places within the County. *See* Montgomery County 2010 and 2011 Demographic Profile, http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/research/data_library/census/2010/documents/moco_profile_sf12010_mdp.pdf (last visited October 10, 2011). 378,396 people live with Bethesda, Germantown, Silver Spring, and Gaithersburg and Vicinity. An additional 239,341 live within Wheaton, Aspen Hill, Potomac, North Bethesda, and Fairland.

biotech, computer science, hospitality and military contractor companies, one-third of the County's land mass is reserved for agriculture use.[10] The County is home to a high and middle income highly-educated workforce, but also has a significant number of low income residents.[11] The age of the County's population is similar to the U.S. overall, [12] but more ethnically and racially diverse.[13] Thus, the County must manage strong competitive commercial interest in providing video and broadband services to densely populated high- and middle-income areas concentrated within relatively small geographic portions of the County, while simultaneously also providing incentives for those same companies to deploy video and broadband services to geographically large areas of the County with relatively low population densities.

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[10] For example, Montgomery County is home to: IGEN and the Human Genome Science Inc.; Sodexho, Marriott and Choice Hotels and Lockheed Martin. For a list of biotech and hospitality companies, *see* http://www6.montgomerycountymd.gov/content/ded/downloads/Biotech%20Companies.pdf (last visited October 10, 2012) and http://www.choosemontgomerymd.com/business-community/industry-sectors/hospitality-tourism (last visited October 10, 2012).

[11] Per capita income 2006-2010: the County's per capita income in the past 12 months (2010 dollars) ($47,310) is 42 percent greater than in the United States overall ($27,334) and the 2006-2010 median household income in the County ($70,647) is 26 percent larger than in the United States overall ($51,914). However, 32 percent of children (47,365) in Montgomery County public schools were eligible for free or reduced-priced meals (FARMs) in 2011-12 school year. U.S. Census Quick Facts at www.census.gov and Montgomery County Public Schools FARMs data.

[12] As of 2011, Montgomery County's population as compared to the United States population: Under age 5, both 6.5 percent; under age 18, both 23.7 percent; and age 65 or older, 12.6 percent versus 13.3 percent. U.S. Census Quick Facts at www.census.gov.

[13] Montgomery County is now one of 336 "majority-minority" counties in the United States. The United States as a whole is 74.5 percent white. As of 2010, Non-Hispanic Whites make up 49.3 percent of the County's population. Hispanics and Latinos are now the County's second largest population group (17.0 percent) followed by African Americans and Blacks (16.6 percent), Asian and Pacific Islanders (13.9 percent) and Other (3.2 percent). Four percent of the County's population are people of more than one race. Montgomery County 2010 and 2011 Demographic Profile. Based 2006-2010 data, 30.9 percent of the County's residents are foreign born, as compared to 12.7 percent of U.S. population, and 37.5 percent of the County's residents speak a language other than English at home, as compared to 20.1 percent of the U.S. population. U.S. Census Quick Facts at www.census.gov.

B. MONTGOMERY COUNTY IS AMONG THE NATION'S MOST ACTIVE VIDEO MARKETS AND HAS BEEN FOR THE LONGEST PERIOD

Local regulation and stronger consumer protection enforcement has not inhibited competition in Montgomery County. The 378,000 household County has more choice in its video market than many other jurisdictions, including those with no local regulation. There are three wireline cable service providers within the County – Comcast, RCN and Verizon – serving over 265,000 cable subscribers and the County has a high broadband penetration rate as well. Two of these providers serve the entire County (where specific housing density requirements exist), and the other provider is a third wireline competitor to a portion of the County. DBS service is available, but the County also has an extensive tree canopy which limits DBS service in some areas. Cable rates in most areas of Montgomery County were deregulated in 2009 as a result of the Commission's "effective competition" order.[14] Thus, if there is anywhere in the nation where consumers should be reaping the promised benefits of competition, it should be in Montgomery County. Unfortunately, as described later in this filing, the promised benefits of competition remain substantially unrealized.

C. ELEVEN LOCAL COMMUNITY MEDIA CHANNELS SERVE THE COMMUNITY'S DIVERSE NEEDS AND INTERESTS

The Commission has sought information about local community media programming in paragraphs 23 and 24 of the Fifteenth NOI. In response, the County provides the following information.

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[14] *In the Matter of Comcast of Potomac, LLC Petition for Determination of Effective Competition in 13 Franchise Areas in Montgomery County, Maryland, MD*, Memorandum Opinion and Order, DA 09-2192 (rel. October 8, 2009).

The County and Participating Municipalities[15] have eleven local community media channels. These are *community access channels* Access19 and the Montgomery Channel; *educational* access *channels* Montgomery County Public Schools (MCPS), Instructional Television (ITV) and Montgomery College Television (MC-ITV), University of Maryland University College (UMUC-TV), and the University of Maryland (UMTV); and *government access channels* County Cable Montgomery (CCM), Montgomery Municipal Channel (MMC), Rockville 11, and Takoma Park City TV. These channels are carried on the Comcast, Verizon, and RCN wireline systems. These channels appear on the basic service tier without requiring additional equipment as compared to local broadcast channels, but all three cable providers deliver encrypted digital signals that require subscribers to have QAM tuners, digital adapters or converter boxes to view video signals. The same number of channels is being carried in 2011 and 2012 as was carried as of June 2010.

The County requires franchise fees and public, education, government access capital grants[16] as compensation for use of the public rights-of-way and to meet the cable-related needs and interests of the community. All three wireline providers break out the amounts collected to support local community media as a separate line item on their subscriber bills.

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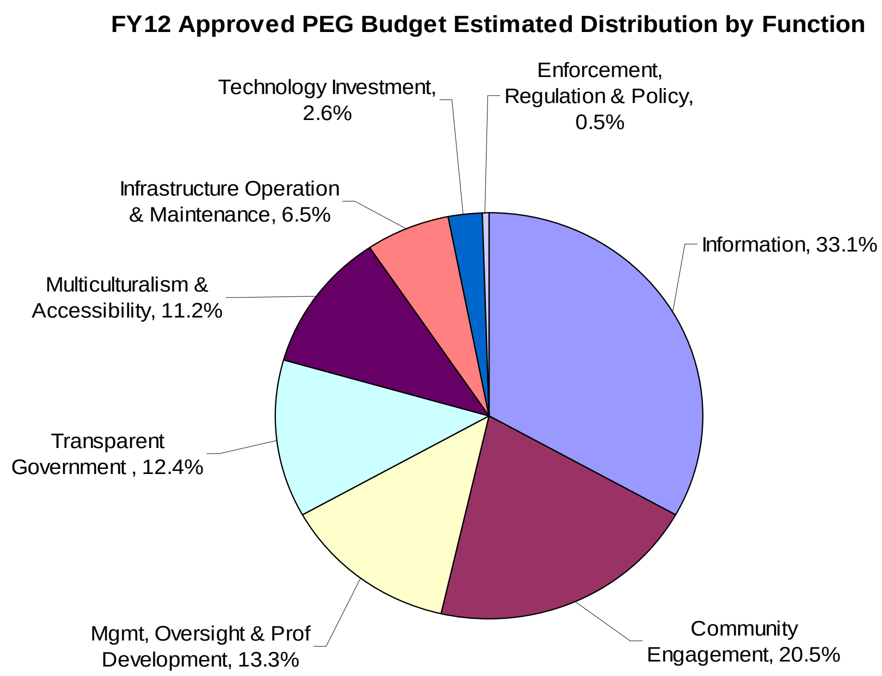
[15] Participating Municipalities include Chevy Chase Village, Chevy Chase Village Section 3, Chevy Chase Village Section 5, City of Rockville, City of Takoma Park, Town of Barnesville, Town of Brookeville, Town of Chevy Chase, Town of Chevy Chase View, Town of Garrett Park, Town of Glen Echo, Town of Kensington, Town of Laytonsville, Town of Poolesville, Town of Somerset, Village of Martin's Addition, Village of North Chevy Chase, Washington Grove. Collectively, these municipalities comprise 10 percent of the total cable subscribers within the County. Additional subscribers are within the City of Gaithersburg, which serves as its own franchising authority, separate from the County and Participating Municipalities.

[16] These capital funds are also used to support construction of the County's fiber optic communications system, known as FiberNet. FiberNet is used to route video signals from the County's local community television stations to the cable operators, and is also used to provide transport of public safety communications, and broadband data, video and voice services to County government offices, schools, libraries, community college, police and fire stations, and water management facilities. The government costs to operate FiberNet is roughly 1/10th the cost of purchasing these services commercially.

The County and Participating Municipalities collectively invest over of $12 million annually for equipment and operation of these channels. Chart 1 shows distribution of this funding:

PROGRAM FUNCTIONS	
Transparent Government	Raw content, such as council, school board and agency meetings
Information	One-way communications, such as PSAs, programs, panels, lectures
Community Engagement	Two-way communications, call to action, community training, new media distribution, media literacy, broadband training
Multiculturalism & Accessibility	Specialized access, including language, closed captioning; other specific cultural or demographic focus
Infrastructure Operation & Maintenance	Operation and maintenance of infrastructure and equipment
Technology Investment	Labor and contract costs related to capital purchases of equipment or infrastructure construction.
Enforcement, Regulation & Policy	Cable regulation, complaint resolution, FCC, federal & State legislation, tower & antenna siting
Mgmt, Oversight & Professional Development	Internal reporting, contract and budget development and administration, grant writing and implementation, staff training

Chart 1



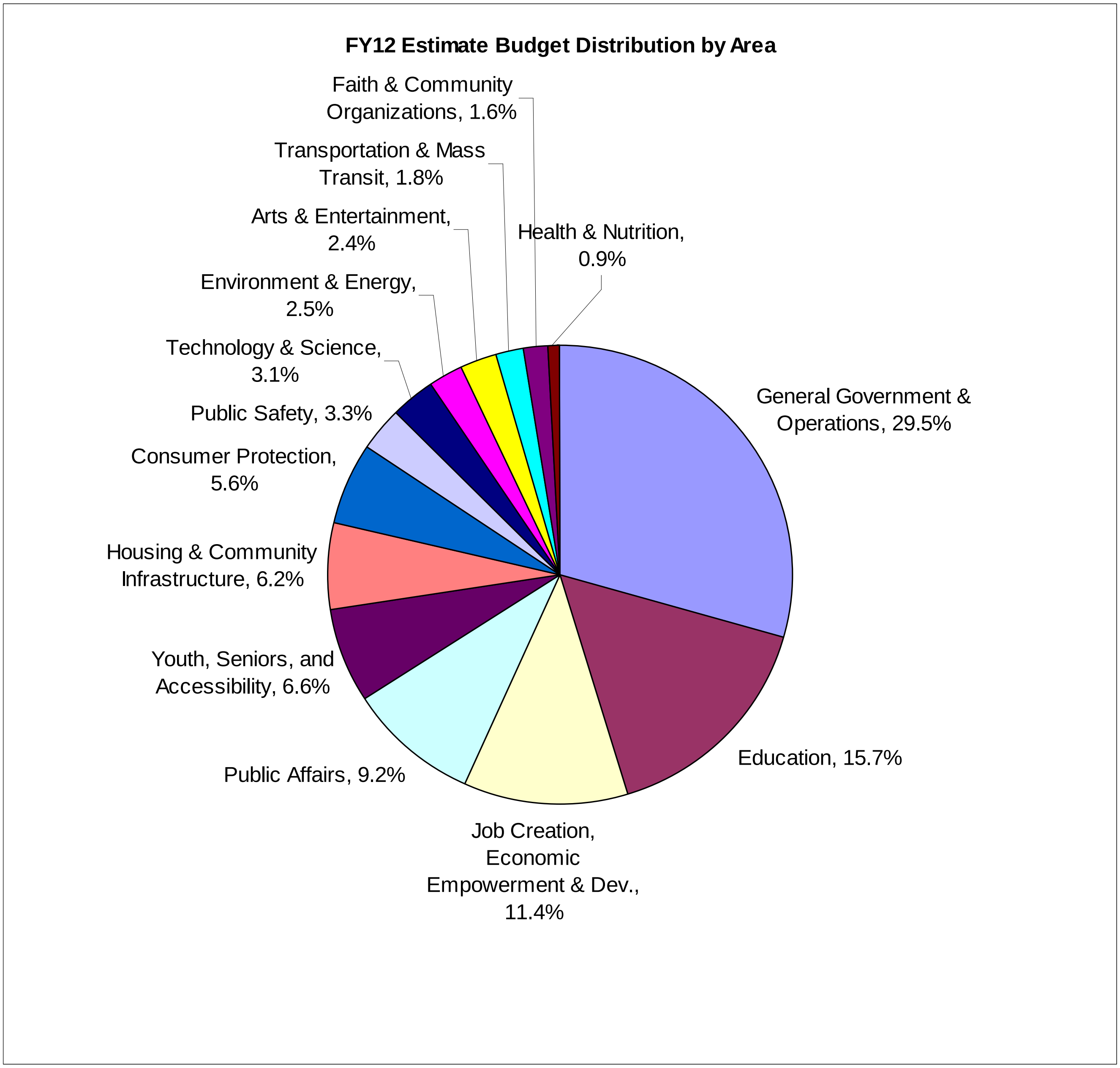
The County's local community media channel programming has won numerous awards, including NATOA, Emmy, Nova, Telly, Savvy and Communicator Awards.[17] The local community media center, Montgomery Community Media, was recently recognized at the Best Public Access Station in America by the Alliance for Community Media.

These local community media channels provided over 10,000 hours of first run programming in 2011. This included more than 2,500 hours of locally produced programming, more than 600 hours of closed captioned programming, and more than 5,000 hours of foreign language programming in Spanish, Arabic, Cambodian, Chinese, Farsi, French, Italian, Korean, Portuguese, Punjabi, Turkish, and/or Vietnamese. Chart 2 shows the distribution of this programming by program area:

PROGRAMS AREAS	
Arts & Entertainment	Art & performance events, artist and venue profiles, general human interest, quirky, author series
Consumer Protection	Consumer education and advocacy, including regulatory enforcement and complaint resolution
Economic Job Creation, Empowerment & Dev.	Vocational training, small business, business improvement districts, large employers or employment fields
Education	Coursework; STEM, reading, language instruction, Homework Hotline, personal development
Environment & Energy	Environment health, green initiatives, biofuels, community gardens, energy efficiency
Faith & Community Organizations	Religious programming, general non-profit support and partnerships
General Government & Operations	General County, school board, general operation, FiberNet and institutional support (e-mail, Internet, phones, etc)
Health & Nutrition	HHS initiatives, public health, fitness, local foods, community gardens, gardening
Housing & Community Infrastructure	Affordable housing, libraries, parks, code enforcement, livable communities, planning
Public Affairs, Human Rights & Veterans	General lectures, elected official dialogues, independent news and analysis, human rights and veterans
Public Safety	Police, fire and rescue, fire and crime awareness and prevention
Technology & Science	Technology training, astronomy, computer science, physical sciences, media literacy, broadband training
Transportation & Mass Transit	Roads and public transportation, bicycling, pedestrian safety
Youth, Seniors & Accessibility	Programs targeted to children or parents, seniors, disability community, youth produced programs, stipends and internships.

[17] For a list of awards see, http://www.watchlocaltv.org/ (last accessed October 10, 2012).

Chart 2



In addition to local community and cultural programming, local community media supports open government initiatives by providing coverage of legislative meetings of County and City Councils and the County Board of Education, town hall meetings hosted by elected officials, and emergency preparedness and public health and safety informational programming. Recent highlights of this local programming include:

- County Report This Week, a collaborative 5 station effort to produce a weekly program featuring news and information about events within Montgomery County (this program is also edited into a shorter Spanish language version)

- Teen Town Hall, allowing teens to engaged in a live televised meeting with County Councilmembers

- Made Dude and Homework Hotline!, providing live tutorial help for middle schools students three days per week, with the ability to take homework questions via telephone, e-mail, FaceBook, and Twitter

- From Combat to Campus, featuring efforts to help recent Iraq and Afghanistan veterans access job training and support programs offered by Montgomery College (the County's community college, which has a larger enrollment than the flagship campus of the University of Maryland)

- Montgomery County Honors World War II Veterans, a live televised event featuring Ted Koppel and attended by hundreds, in which more than 175 local County veterans of World War II were honored by local County, state and federal elected officials

- Life in a War Zone: Montgomery County During the Civil War, a local Emmy-award winning a six-part historical series exploring the history of the County during the Civil War

- Montgomery Al Día and Mi Escuela Su Escula, two televised Spanish language radio programs featuring County and College news and information presented over the local Spanish language AM radio station and on television

- Programs and series highlight the accomplishments of local Olympic gold-medalists and athletes

- Power for the People, community journalism stories featuring the impact of the June 29, 2012 derecho storm on community residents and businesses, as well as coverage of the Public Service Commission and County Council hearings addressing electric power company and cable and broadband service provider responses to storm damage

The County also provides funding for community media training, including assisting non-profits to create media campaigns to support their missions and community fundraising efforts, providing job training for those who work in the media field or who use video in web formats, and providing training for members of the community interested producing television and web content or in creating personal media. In 2011, County residents volunteered over 13,600 hours to create local community media programming.

In addition, the County uses community media funding to support Montgomery College initiatives to use video as an instructional tool through its Lecture Capture series. Courses are video recorded and posted on-line to enable student to review lectures. Initial data suggests that the ability to rewatch lectures improves retention and learning, especially for students with limited English proficiency and for students who struggle with mathematics courses. (Failure to compete the math requirement is the biggest reason why students do not complete their associate degrees.) Montgomery College also uses local community media support to provide vocational media training courses to prepare students for employment in the media industry. Montgomery College students produced over 85 hours of local programming content in 2011.

Finally, the County also supports local youth media programming, including support for media internships, audio podcasting and digital video equipment for youth, and youth-produced monthly television program and on-line content.

Like many commercial television stations, Montgomery County's local community media providers have enhanced their on-line offerings to complement their cable television-based offerings. Many of the County's local community media stations offer live streaming of television content, Internet-based on-demand video recordings, and posting of content on YouTube. In 2011, these channels' video content was viewed 265,086 times on YouTube and 232,274 times via website-based video-on-demand. 1,058,621 unique website visitors viewed 5,516,492 pages of website content.

Very soon, the County will televise, Internet live stream, and make available on line on-demand, televised coverage of all local County Council meetings and worksessions. On-line viewers can click on meeting agenda items and be directed to the specific portion of a meeting addresses that agenda item. Using free software, viewers may also isolate specific portions of meeting and post that content on to a website or any html platform. MyMCMedia.org, the

County's community media website continues to grow its visitor traffic and to be a central location where residents can post and find information about community news and events.

III. WIRELINE INDUSTRY CALLS FOR FURTHER DEREGULATION OR REGULATORY RESTRAINT ARE PREMATURE BECAUSE COMPETITION AND BENEFITS THEREOF HAVE NOT EMERGED

The Commission identified 13 regulatory provisions that affect MVPDs and sought comment on the impact of these provisions on "entry and rivalry among MVPDs."[18] Wireline providers in particular responded with calls for deregulation and/or regulatory restraint in several areas. For example, Comcast urged the Commission "to review whether regulations that apply solely to cable operators but not to other MVPDs – like program access, channel occupancy, multiple dwelling units, basic tier rates, encryption, and navigation devices – need to be rescinded."[19] Verizon urged the Commission to refrain from adopting "unnecessary rules" including any "technology mandate" that may come out of the Commission's All Vid inquiry, any application of MVPD regulations to online video distributors (OVDs), "even if the same provider is an MVPD for the purpose of other, independent services that it offers[,]" and any digital standards proposed in the Commission's recent Technical Standards NPRM (urging rather that existing rules that no longer apply should simply be repealed).[20]

Providers justified their calls for deregulation or regulatory restraint on the grounds that these rules are now unnecessary in a world where the video programming marketplace is "competitive". The County acknowledges that consumers have more options, but as demonstrated below, it is premature to declare victory – there is a long way to go before competition – and the benefits for consumers – is fully achieved. Until then, the Commission

[18] Fifteenth NOI.

[19] For example, Comcast Comments at 33.

[20] Verizon Comments at 22-27.

should not grant further regulatory relief to dominant wireline video service providers until promised benefits to consumers emerge.

A. <u>WHILE COMPETITIVE CONDITIONS HAVE IMPROVED IN SOME AREAS, THEY HAVE NOT IMPROVED EVERYWHERE AND FURTHER PROGRESS IS QUESTIONABLE</u>

There are three fundamental problems with claims that the video market is *now* "competitive." First, DBS has proven not to be as effective competitor to the incumbent provider as a second wireline provider. Second, a majority of consumers still have only one wireline provider, the incumbent. Third, emerging competition from OVDs must factor in not only the cost of the service, but also the cost of broadband service needed to receive OVD service itself.

Competition from DBS. Commenters eager claim that a competitive video marketplace has emerged cite to the statistic in the Fourteenth Report that 98.5 percent of consumers can choose from three MVPDs.[21] This rests entirely on the *assumption* that DBS service is available to all consumers when in reality it will not be available to all consumers due to technical or other limitations.[22] Moreover, in 2007, the Commission recognized that DBS "competition" is insufficient to curb the market power of a wireline cable operator. In its Order imposing new federal regulations on the franchising process, the Commission based its measures on an imperative need for *wireline* competition to incumbent cable operators. The Commission stated that "[t]he record demonstrates that new cable competition reduces rates far more than competition from DBS" and indicated that wireline competitors, not DBS, bring down rates.[23] In

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[21] Fourteenth Video Competition Report, ¶¶ 27, 40; Comcast Comments at 32.

[22] Fourteenth Video Competition Report, FN 80 recognizes this is only an assumption. DirecTV notes on its website various requirements for placement of a dish, including the need to have a "clear view of the southern sky." http://support.directv.com/app/answers/detail/a_id/2682/

[23] Local Franchising Order at ¶ 50; *see also Id.* at ¶ 35 (analyzing the new entrant as the "second provider," without counting DBS companies as competing providers). These statements were based on

short, DBS is not a true competitor to wireline MVPDs. Moreover, the largest DBS MVPD, DirecTV, cautions that due to trends in bundling, and multi-platform video programming delivery, the "video only market" no longer captures competitive challenges, broadband is becoming the "anchor" product of the wireline MVPDs, and service bundles that include broadband are difficult for DBS providers to compete with.[24]

Competition from Telephone MVPDs. Given that wireline competition is acknowledged to provider greater consumer benefits, some commenters make generalized claims that telephone MVPDs are "in much of the country."[25] This is not the case. The majority of homes do not have a choice of wireline MVPDs. Table 2 of the Commission's Fourteenth Video Competition Report indicates the percentage of homes with access to two *wireline* MVPDs (i.e., at least four separate MVPDs) has only recently grown to a significant figure–from 4.7 percent in 2006 to 32.8 percent in 2010 (42.9 million homes).[26] The same table indicates ***65.7 percent of homes*** only have access to the incumbent cable operator or DBS (85.9 million homes), and 1.5 percent of homes (2 million homes) have access to no *wireline* MVPD at all. Moreover, AT&T and Verizon are largely responsible for the increase in wireline MVPD choice and both companies are nearing the end of their planned video service roll outs.[27]

Competition from OVDs. Commenters agree there is increasing competition from OVDs but they also acknowledge that OVDs are a complement to, not a replacement for, MVPD

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cable price data from 2005, and as discussed further *infra*, areas with effective competition now have higher prices than regulated areas.

[24] DirecTV Comments at 2, 13, 15-18.

[25] Comcast Comments at 18.

[26] Fourteenth Video Competition Report, Table 2 (on page 18) Because the two DBS providers are included in that tally, only areas that have 4 or more MVPDs have two wireline providers.

[27] Verizon Comments at 4.

service at this stage, just as the Commission found in its Fourteenth Video Competition Report.[28] Further development of the OVD market is dependent on consumer access to affordable broadband without draconian bandwidth caps, and OVD access to those consumers over broadband networks. This places both consumers and OVDs at the mercy of wireline MVPDs that dominate the broadband infrastructure into consumers homes, do not have to share network facilities,[29] and have repeatedly challenged the validity of any Commission rules intended to ensure fair and open access to the Internet.[30]

In summary, the Fourteenth Video Competition Report shows the majority of consumers (67.2 percent or 87.9 million homes) either only have only one *wireline* MVPD available (an incumbent cable provider), and thus have no choice of MVPD if DBS service is unavailable at their home, or are entirely dependent on the availability of DBS for any MVPD service at all. While there is more choice now than in the days before DBS and telephone MVPDs were available, for most consumers, in terms of MVPDs, the choices remain limited nearly two decades after the Commission's First Video Competition Report. And recent industry trends such as the winding down of telephone MVPD build out schedules, and the move to multiplatform delivery bundles, suggest that the future may see little progress or even a reversal in the growth of video competition.

B. OVERALL INDUSTRY LEVEL PROMISED BENEFITS OF COMPETITION ARE NOT BEING FULLY ACHIEVED

Not only is there no robust head-to-head competition in most of the nation, consumers have not seen promised benefits of competition fully realized. This is demonstrated by applying

[28] Comcast Comments at 31; Netflix Comments at 6.

[29] Netflix Comments at 10.

[30] *Comcast Corp. v. Federal Communications Commission*, 600 F.3d 642 (DC Cir. 2010); *Verizon et al. v. Federal Communications Commission*, D.C. Circuit, Case No. 11-1355.

the standards the Commission established years ago for measuring success. In earlier reports the Commission established four promised benefits of video competition: 1) reduced rates; 2) improved quality of video services, for example by increasing channels without rate increases; 3) new services such as Internet and voice; and 4) improved customer service.[31] In this section we examine the status against these measures at the industry level, and in the next section we look specifically at Montgomery County as a case study in the tradition of the early video competition reports released by the Commission.

1. Communities Generally Have Not Experienced Reduced Cable Rates

Over the years, there have been countless reports and studies promising consumers would see significant rate reductions as a result of video competition, including by the Commission, the General Accountability Office, and by advocates of state video franchising legislation.[32] But there have also been more somber assessments, such as the Commission's Fifth Video Competition Report noting that lower incumbent prices may be "transitory" and that "overbuilders may find it difficult to earn a profit over the long run",[33] the Eighth Video Competition Report suggesting lower prices may be anti-competitive attempts by the incumbent

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[31] Fourth Video Competition Report, ¶ 178, "In the majority of these markets, the entrant was a LEC. A majority of incumbent cable operators responded by offering subscribers: (1) improved programming; (2) additional channels at the same monthly rate; (3) reduced rates for basic tier service; and (4) new services such as upgraded converter boxes with interactive programming guides." *See also*, Sixth Video Competition Report, ¶ 215 (rel. Jan. 2000)(incumbent competitive response predicted to be lowering prices, providing additional channels at the same monthly rate, improving customer service, and adding new services including high speed Internet and telephone.

[32] For example GAO, Issues Related to Competition and Subscriber Rates in the Cable Television Industry (October 2003); GAO, Wire-Based Competition Benefited Consumers in Selected Markets (GAO-04-241, February 2004); Y.M. Brownstein, "Expected Consumer Benefits from Wired Video Competition in California" (2008) available at www.ischool.berkeley.edu/node/10436 (last accessed October 10, 2012).

[33] Fifth Video Competition Report at ¶ 234.

to try to put the new entrant out of business,[34] and the Commission's Eleventh Video Competition Report declaring there are "generally not lower prices".[35]

The Commission's most recent Cable Prices Report chronicles a relentless rise in the average monthly price of expanded basic service (excluding taxes, fees and equipment charges) even in the face of increased competition, noting the average price of expanded basic service for all communities increased at a compound average annual growth rate of 6.1 percent during the period 1995-2011 whereas CPI increased at only 2.4 percent over the same period.[36] Even worse, Commission reports since 2009 have reported the average prices are ***higher*** in effective competition communities than in communities without effective competition. ($58.74 in effective competition communities vs. $56.82 in noncompetitive communities)[37]. The Commission itself has recognized that the price difference is now statistically significant.[38] The National Association of Broadcasters provides evidence that consumers are leaving MVPDs because of price.[39]

And these service rate increases do not include the costs of equipment needed to view services, an increasingly necessary component of service delivery. Though the historical information is less detailed, the cable prices reports have chronicled increases in equipment rates as well.[40]

Competition has not resulted in lower prices for consumers.

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[34] Eighth Video Competition Report at ¶ 209.

[35] Eleventh Video Competition Report at ¶ 4.

[36] Cable Prices Report at ¶ 2.

[37] Cable Prices Report at ¶ 3.

[38] Cable Prices Report at ¶¶ 3-4.

[39] NAB Comments at 4-5.

[40] Cable Prices Report at ¶ 19 ("Most equipment prices increased on an annual basis.")

2. Quality of Video Services Has Improved But Not Without An Increase in Price

A second early expectation was that the quality of the video services would improve due to competition *without an increase in prices*. Prices have obviously increased so, as an alternative, the Commission and providers point out that the price per channel is lower for consumers in effective competition areas because they receive more channels than consumers in non-effective competition areas in the comparable service package.[41] Indeed, the Commission's First Video Competition Report used the rough measure of the number of channels to evaluate quality and it continues to be the only measure used today in these reports.[42] This is despite the observation made in the Commission's Cable Price Report released in 2001 that this may not be the only measure, or a particularly useful one, it is just an easier one to calculate:

> The value of cable services can be measured in various ways. Some analysts have suggested that the average number of channels (or satellite channels) received by subscribers, along with their respective per channel rates, are an appropriate measure of value. Alternatively, it has been suggested that an increase in the number of channels (satellite or otherwise) may not be similarly valued by all subscribers, or that as more channels are added, the additional channels have a declining marginal value. Because of the difficulty of obtaining consumer valuation data, our survey did not specifically seek information on how consumers value individual channels within the BST and CPST packages they receive, or how they would value these packages if given the option of receiving fewer channels or different channels than those offered.[43]

Some commenters see the proliferation of channels as unquestionably good news for consumers.[44] However, in the County's view, that is too simplistic an analysis. Other commenters in the current proceeding call into question the notion that consumers always view

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[41] Verizon Comments at 5-6.

[42] First Video Competition Report stated: "The attributes or "quality" of cable services are multi-dimensional, and thus, no single measure of quality is available. Possible indices of cable service quality are the channel capacity of cable systems and the quantity of cable programming." 9 FCC Rcd. at 7452.

[43] Cable Prices Report (rel. Feb. 14, 2001) at footnote 21.

[44] NCTA Comments at 6.

having more channels as an improvement in quality, as sometimes they receive programming they do not desire because programmers require MVPDs to carry the channels,[45] and are cutting back on tiers because they do not see their value.[46] Without structured input from consumers in the form of an indepth study, an accurate assessment of whether this benefit has been achieved is not possible.

3. MVPDs Are Adding New Service Offerings But the Drivers Are Unclear

MVPDs have offered new services over the years, from high speed Internet, to voice over IP service, to DVRs to HD channels, and beyond. It is not always clear that these new service offerings are in response to competition. For example, Comcast launched voice and high speed Internet in 20 markets in 2005, more than 7 years after it got into the phone business with a circuit-switched phone service.[47] Was this due to competitive pressures or technological advances? As the Commission observed in its Eighth Video Competition Report: "The differences between competition and general market responses based on technological advances, improved marketing, and new service opportunities are not always easy to distinguish."[48] In equal measure, there is naturally a drive to generate increased revenues per user through new service offerings.

Some of the more recent service offerings, such as the multi-platform availability of video programming on TVs, computers, handheld devices and the like, discussed by numerous

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45 DirecTV Comments at 19; OPASTCO Comments at 7-10.

46 NAB Comments at 6 – MVPDs people cutting back service tiers not valued.

47 Comcast Press Release: http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=158&SCRedirect=true

48 Eighth Video Competition Report at ¶ 197.

MVPDs in this proceeding[49] are certainly innovative, and may indeed be in response to competition from OVDs, for example. However, these new offerings also come at a cost to consumers. For example, to view video programming on multiple platforms a consumer must subscribe to both Internet and video service from the same MVPD. Further, commenters have expressed concerns that that programmers sometimes require a charge per Internet subscriber for this programming availability which also increases costs for consumers[50] and that wireline MVPDs may be cross-subsidizing video services with higher rates for Internet.[51] There may be other market distortions as well.[52]

4. Improvements in Customer Service Generally Are Not Evident

Recent Commission reports on video competition say little about MVPD customer service. For example, the Fourteenth Video Competition Report limited the discussion to a few paragraphs,[53] and no longer mentions improved customer service as a benefit of competition.[54] Customer service is hardly mentioned in the NOI for the current proceeding either.[55] The County reiterates its previous request that the Commission include consumer satisfaction questions and customer surveys as part of its information gathering process for these reports.[56]

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[49] Comcast Comments at 11-13, Verizon Comments at 3-5, ATT Comments at 2, NCTA Comments at 10.

[50] OPASTCO Comments at 8-9.

[51] DirecTV Comments at 16-18.

[52] While not addressed in these comments, the Commission should address how different tax and regulatory schemes distort the market. For example, some providers contribute to the community they do business in, while others do not. In addition, the Commission collects a regulatory fee from cable subscribers but this proceeding analyzes other video providers as well.

[53] Fourteenth Video Competition Report, ¶¶ 99-101.

[54] Fourteenth Video Competition Report, ¶ 134.

[55] Fifteenth NOI, ¶¶ 26 and 83.

[56] *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 07-269, Comments of Montgomery County at 7 (filed May 20, 2009); Reply Comments of Montgomery County, Fourteenth NOI, at iv. (filed July 8, 2011).

Without comprehensive information, it is difficult to judge how the industry, and particularly incumbents are doing in response to competition.

C. IN MONTGOMERY COUNTY, ONE OF THE MOST COMPETITIVE MARKETS IN THE COUNTRY, PROMISED BENEFITS OF HEAD-TO-HEAD COMPETITION HAVE NOT BEEN FULLY REALIZED

Given that the County is served by three wireline MVPDs, and cable rates in most areas of Montgomery County were deregulated in 2009 as a result of the Commission's "effective competition" order, the County should be at the leading edge of the competitive video markets and a shining example of the consumer benefits of rigorous video competition. However, as the County has reported to the Commission on several occasions, its residents in these effective competition areas are not fully enjoying the promised benefits of head-to-head competition. In this section the County updates information previously filed on how competition has played out for consumers in the County and attempts to evaluate competition using the Commission's four promised benefits.

1. Rates for Cable Service and Equipment Have Generally Not Decreased

a. Rates for Cable Service Continue To Increase Unchecked

Data regarding pricing of cable services and equipment in Montgomery County is discussed in this section. In prior years, the County has emphasized the need for the Commission to focus not only on costs of service, but also on equipment costs. Thus, the County acknowledges the Commission's effort to collect data related to the costs of consumer equipment[57] in the Fifteenth NOI, and urges the Commission to continue to take action.

[57] Fifteenth NOI at ¶ 79 "In the 15th Report, we plan to discuss the devices that facilitate the delivery of video programming and their effect on competition in the delivery of video programming. We recognize the costs of consumer premises equipment may hinder competition by, among other things, raising consumers' switching costs. We therefore request information on developments relating to consumer premises equipment and the services providing options to consumers for viewing video programming. In particular, we seek information on the retail market for set-top boxes, including set-top boxes that do not

Unfortunately, existing MVPDs or equipment manufacturers chose not to respond to cost-related questions. The Commission should continue to look for other means to compel providers to provide the data needed to make a meaningful analysis.

The service rates charged by the three wireline providers currently serving Montgomery County residents – Comcast, RCN and Verizon – appear in Table 1.

Table 1 – Cable Service Rates in Montgomery County

	2007	2008	2009	2010	2011	2012	2007-12 Percent Increase
Comcast							
Basic*	$17.30	$17.25	$19.10	$19.10	$21.10	$19.00	0.09%
Standard/Digital Starter*	$58.10	$60.35	$63.30	$64.65	$67.80	$71.15	22.4%
RCN							
Basic*	n.a.	n.a.	$17.95	$22.97	$22.97	$22.97	27.9%**
Signature Lineup*	$56.94	$61.44	$65.50	$70.50	$73.50	$79.50	39.6%
Verizon							
Basic*	$12.99	$12.99	$12.99	$12.99	$12.99	$12.99	0%
Expanded Basic (includes basic)	$39.99	$47.99	$47.99	$57.99	$64.99	$64.99	62.5%

n.a = price not available.
* Analog service eliminated in 2009.
** RCN Basic percentage increase is from 2009-2012.

As illustrated in Table 1, the rates paid by subscribers for cable television services continue to increase. Like elsewhere, wireline competition does not restrain rates in Montgomery County. For example, Comcast must compete with two wireline providers. Since

use CableCARDs, such as those sold at retail for use with DBS services or for use with OVD services. What are the challenges that manufacturers face in investing and innovating in consumer equipment? What are the different types of consumer premises equipment – both MVPD supplied and non-MVPD supplied – used to access video content and the capabilities thereof? What prices do MVPDs typically pay for those devices? To what extent do MVPDs offer different equipment options at different price points on their systems, and what is the overall lease cost of such equipment to subscribers? To the extent that consumers can purchase comparable devices, what price would a consumer pay for such a device?"

competition was initiated, Comcast's rate for its standard service (a combination of basic and expanded tier service) increased by nearly 20 percent between 2007 and 2012.

Table 1 also shows that the competitors do not seem to be affected by competition any more than the incumbent. RCN's rate for its signature lineup has increased by nearly 40 percent since 2009. And while Verizon has held its basic rate steady since 2007, it has raised its expanded basic rate by a whopping 63 percent. Indeed, industry pricing behavior in the County has played out much as predicted in the County's 2009 filing in which we stated:

> It is reasonable to assume…that Verizon's priority is to gain market share as it rolls out its network, while Comcast and RCN seek to maximize revenue from existing customers. Perhaps at some point in the future prices will converge, with Verizon raising its rates and Comcast's coming down – but at that point it would seem that both companies would have the incentive to maintain comparable prices, and no incentive to reduce them, or even to limit increases to the general rate of inflation. In fact, this kind of pricing behavior is not uncommon in oligopolies. (citations omitted)[58]

In the bigger picture, perhaps the most striking thing about the 20-60 percent service rate increases in the 2007 to 2012 period is that they have been imposed during a time of deep recession and a sluggish rebound in which the U.S. economy has experienced very low annual inflation rates. The CPI increase from 2007 to 2012 was a modest 10.8 percent.[59] Thus, looking past industry's vague and generalized references to the benefits of promotional rates and bundling, and focusing on the real service rates on offer to consumers once the promotions end, it is clear that consumers in Montgomery County are not seeing a price benefit of competition.

Providers often blame video service price increases on increased programming costs but the evidence is not clear on the relationship between programming costs and video service costs,

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[58] *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 07-269, Comments of Montgomery County at 7 (filed May 20, 2009).

[59] The CPI was derived by comparing the figure for August 2007 to August 2012 in Department of Labor, Bureau of Labor Statistics CPI table available here: ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt (last accessed September 24, 2012).

particularly in light of comments that the largest MVPDs either do not experience the same level of programming increases as others[60] or pass some of these costs on to their non-video subscribers through cross-subsidization.[61] What is indisputable is that the existing "head-to-head" wireline competition in Montgomery County has not delivered on the promise of lower prices.

b. Rates for The Most Popular Cable Equipment Also Are Increasing

As for equipment rates, subscribers in the County are also paying substantial amounts to rent equipment, and recent trends suggest subscribers will continue to pay substantial amounts to their service providers for equipment which they can obtain from no other source.

Table 2 contains the rates for cable equipment in Montgomery County for 2007 through 2012. The table shows that monthly rental rates for some of the most popular equipment remain high. For example, NCTA data shows that demand for digital tiers and digital services such as DVRs continue to grow,[62] and the monthly rental charge for the equipment needed to use these services can add as much as $20 to the consumer's bill *per converter*.

Table 2 – Cable Equipment Rates in Montgomery County

	2007	2008	2009	2010	2011	2012	2007-12 Percent increase
Comcast							
Basic only converter	$0.90	$1.10	$1.10	$4.99	$3.20	$0.60	-33%
Addressable converter	$3.75	$3.70	$3.40	$3.20	$3.20	$2.15	-43%
DVR converter				$15.95†	$15.95†	$16.95†	100%
HD converter	$6.50	$7.95	$7.95	$9.25	$12.45*	$9.25**	42%
HD DVR converter				$25.20^	$25.20^	$26.90^	6.7%•
MultiRoom DVR					$19.95‡	$19.95‡	0%•
Remote control	$0.20	$0.25	$0.25	$0.25	$0.25	***	

60 Cox Comments at 2 discusses the volume discounts received by large MVPDs.

61 DirecTV Comments at 18.

62 NCTA Comments at 6-7.

Cable Card	n.c.	n.c.	n.c.	$9.25	$9.25	$9.95	7.6 %•
Digital Adapter	n.a.	n.a.	$1.99	$1.99	$1.99	$1.99	0%•
RCN							
Digital converter	$7.95	n.a.	$3.95	$3.95	$4.95	$4.95	-38%
Additional converter	$7.95	n.a.	$6.95	$6.95	$4.95	$4.95	-38%
DVR converter	$12.95	n.a.	$17.95	$17.95	$17.95	$17.95	39%
HD converter	$9.95	n.a.	$11.95	$9.95	$9.95	$9.95	0%
HD DVR converter					$19.95	$19.95	0%
Cable Card	$1.50	n.a.	$1.50	$1.50	$1.50	$1.50	0%
Digital Adapter	n.a.	n.a.	$3.95	$3.95	No longer offered		

	2007	2008	2009	2010	2011	2012	2007-12 Percent increase
Verizon							
Std Def. Converter	$4.99	$4.99	$5.99	$5.99	$5.99	$5.99	20%
DVR converter					Not available		
HD converter	$9.99	$9.99	$9.99	$9.99	$9.99	$11.99	20%
HD DVR converter	$12.99	$15.99	$15.99	$15.99	$15.99	$16.99	23%
HD Home Media DVR	$19.99	$19.99	$19.99	$19.99	$19.99	$19.99	0%
CableCard	n.a.	n.a.	$3.99	$3.99	$3.99	$3.99	0%
Digital Adapter	n.a.	n.a.	$3.99	$3.99	$3.99	$5.99	0%

† Comcast offers a DVR Service and does not offer DVR equipment separately. DVR Service is included with the HD package that offers premium movie channels.
^ Price for HD DVR requires lease of HD converter box plus DVR service fees.
* Comcast requires HD Technology fee per outlet and does not offer HD equipment for lease for non-basic tier subscribers. HD converter fee calculation includes HD Technology Fee plus Digital Converter.
‡ Comcast includes DVR service and waives HD Technology Fee with lease of initial AnyRoom DVR Service. Comcast offers multi-room DVR as a service and does not offer equipment separately.
** In 2012, Comcast began including an initial digital converter and remote control with the cable packages, but the HD Technology fee is required for the initial and additional outlets. For additional outlets, subscribers must pay the HD Technology Fee plus Digital Converter charges.
*** $0.20 remote control is only required for additional outlets.
•Percentage increase since first year equipment was offered.
n.c. = no charge
n.a.= price not available

These rental fees add significantly to the total cost of obtaining cable services. Cable operators in Montgomery County encrypt almost all cable channels, and are urging the

Commission to permit them to encrypt all channels,[63] forcing subscribers without digital televisions to pay for additional equipment charges – a converter or a digital adapter – on every television in their house. Higher equipment fees are required to use basic features, such as the electronic program guide, or moderately advanced features such as video-on-demand, because low priced adapters offered by cable operators do not provide these types of services. Consequently, as cable operators encrypt more programming, they are simultaneously expanding their captive digital equipment rental market.

This cost increase is particularly dramatic for subscribers who must rent equipment for more than one television set. Comcast estimates that there are 2.8 television sets in the average household.[64] For the large number of subscribers in the County who have more than one television set, paying for a converter on every television set adds substantial amounts to their monthly bills.

Table 3 shows the effects of equipment charges on rates for subscribers who pay for service to more than one television set. As noted above, subscribers do have the option of paying lower rates for digital adapters, instead of set-top boxes, but these devices do not provide access to the on-screen program guide or to video-on-demand services.[65] Thus, if a subscriber wants the benefit of the full capability of provider's services, these cheaper devices are not adequate.

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[63] *In the Matter of Basic Service Tier Encryption*, MB Docket No. 11-169, PP Docket No. 00-67.

[64] *Comcast's Montgomery Digital Network Enhancement and "The World of More,"* presentation by Comcast to Montgomery County (June 2009).

[65] Rates for digital adapters appear in Table 2.

Table 3 – 2012 Rates for Service plus Equipment

<table>
<tr><th></th><th>Service Only</th><th colspan="2">Service + one set</th><th>Increase over service only</th><th colspan="2">Service + two sets</th><th>Increase over service only</th><th colspan="2">Service + three sets</th><th>Increase over service only</th></tr>
<tr><td>Comcast</td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td></tr>
<tr><td>Basic only, converter + remote</td><td>$19.00</td><td colspan="2">$19.80</td><td>4.2%</td><td colspan="2">$20.60</td><td>8.4%</td><td colspan="2">$21.40</td><td>12.6%</td></tr>
<tr><td>Expanded Basic + Addressable converter + remote</td><td>$71.15</td><td colspan="2">$71.15</td><td>0%</td><td colspan="2">$81.10</td><td>10.4%</td><td colspan="2">$91.05</td><td>27.9%</td></tr>
<tr><td>Expanded basic + HD digital converter + remote</td><td>$81.10^</td><td colspan="2">$81.10^</td><td>0%</td><td colspan="2">$91.05^</td><td>42.7%</td><td colspan="2">$101.00^</td><td>24.5%</td></tr>
<tr><td>RCN</td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td></tr>
<tr><td>Basic + digital converter</td><td>22.97</td><td colspan="2">$27.92</td><td>21.5%</td><td colspan="2">$32.87</td><td>43.0%</td><td colspan="2">$37.82</td><td>64.6%</td></tr>
<tr><td>Expanded basic + digital converter</td><td>79.50</td><td colspan="2">$84.45</td><td>6.7%</td><td colspan="2">$89.40</td><td>13.5%</td><td colspan="2">$94.35</td><td>20.2%</td></tr>
<tr><td>Expanded basic + HD converter</td><td>79.50</td><td colspan="2">$89.49</td><td>13.5%</td><td colspan="2">$99.48</td><td>27.0%</td><td colspan="2">$109.47</td><td>40.6%</td></tr>
<tr><td>Verizon</td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td><td colspan="2"></td><td></td></tr>
<tr><td>Basic + standard definition converter</td><td>12.99</td><td colspan="2">$18.98</td><td>46.1%</td><td colspan="2">$32.97</td><td>153.8%</td><td colspan="2">$40.98</td><td>215.4%</td></tr>
<tr><td></td><td></td><td>HD</td><td>HD-DVR</td><td></td><td>HD</td><td>HD-DVR</td><td></td><td>HD</td><td>HD-DVR</td><td></td></tr>
<tr><td>Prime HD service and converter 210 channels</td><td>64.99</td><td>$76.98</td><td>$81.98</td><td>26.1%*</td><td>$96.96</td><td>$101.96</td><td>56.9%*</td><td>$104.97</td><td>$109.97</td><td>69.2%*</td></tr>
<tr><td>Extreme HD service & converter 290 channels</td><td>74.99</td><td>$86.98</td><td>$91.98</td><td>22.7%*</td><td>$106.96</td><td>$111.96</td><td>49.3%*</td><td>$114.97</td><td>$119.97</td><td>60.0%*</td></tr>
<tr><td>Ultimate HD service & converter 385 channels</td><td>89.99</td><td>$101.98</td><td>$106.98</td><td>18.9%*</td><td>$121.96</td><td>$126.96</td><td>41.1%*</td><td>$129.97</td><td>$134.97</td><td>50.0%*</td></tr>
</table>

^Includes Comcast HD Technology Fee ($9.95). For additional outlets, the HD Technology Fee includes the digital converter and remote control.

*Percentage increase for HD-DVR converter box

<u>Table 3</u> also illustrates the dramatic effects of equipment rates on the amounts subscribers pay. A Verizon basic-only subscriber renting a single converter will pay 46 percent more than the basic service price. A Verizon HD subscriber with a DVR pays an extra 19 to 26 percent.

The effects are even greater for subscribers with multiple televisions: if a Verizon subscriber has three sets and wants a standard converter on all of them, the subscriber will pay an additional 215 percent. A comparable RCN subscriber would pay an additional 65 percent, and a Comcast subscriber would pay an additional 26 percent. In other words, equipment adds a lot to the rates subscribers pay, and the Commission needs to specifically address this issue in any discussion of competitive video service. The Commission took a step towards developing an All Vid solution in 2010, but unfortunately that inquiry proceeding has stalled[66]. Verizon discusses in its comments that it is getting ready to roll out an alternative to its current set top boxes.[67] No price information is provided so it is difficult to evaluate whether this new alternative will offer any savings to consumers.

Although MVPDs have a lot to say about the new modes they are deploying to deliver some of their video services on multi-platforms to iPads and other handheld devices, cable operators do not explain why they continue to offer only to rent their equipment to consumers. Tables 4 and 5 demonstrate that equipment rental is extremely profitable. Table 4 illustrates very clearly that a cable subscriber in effect "pays" in rental fees the equivalent of the full reference purchase price for their equipment in most cases in about a year.

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[66] *See* All Vid Inquiry.

[67] According to the company, this new Verizon Media Server "will be a single device that will serve as an entertainment hub for the home, streaming media to other Internet-connected devices in the home" but TVs that are not IP-enabled would still need "small set-top boxes". Verizon Comments at 12.

Table 4: Consumer Equipment Cost Comparison
DirecTV Receiver Purchase vs Monthly Cable Converter Rental
(Number of months at monthly rate to meet equivalent purchase price)

DIRECTV	COMCAST	RCN	VERIZON
	Digital Adapter $1.99^^	Digital Adapter No longer available	Digital Adapter $5.99
Standard Receiver $69.00	Digital Converter* $2.15 **(32 months)**	Digital Converter $4.95 **(14 months)**	Digital Converter $5.99 **(12 months)**
DVR Receiver $99.00	DVR Receiver $16.95◊ **(6 months)**	DVR** $17.95 **(6 months)**	
HD Receiver $99.00	HD Converter* $9.95^ **(10 months)**	HD Converter $9.95 **(10 months)**	HD Converter $11.99 **(9 months)**
HD DVR Receiver $199.00	HD DVR Receiver □ $26.90 **(8 months)**	HD DVR Converter $19.95 **(10 months)**	HD DVR Converter $16.99 **(12 months)**
	MultiRoom DVR $19.95		MultiRoom DVR *** $19.99
Not Required	CableCard□□ $1.15	CableCard $1.50	CableCard $3.99

*Includes Comcast $0.20 charge for remote control
**SD DVR no longer advertised on RCN website
***Requires rental of additional Verizon converters
^Comcast requires either payment of the HD Technology Fee or the HD Additional Outlet Service Fee to receive HD converter boxes.
^^No charge for first two outlets.
◊Comcast offers a DVR Service and does not offer DVR equipment separately.
□Price for Comcast HD DVR requires DVR Service plus HD Technology Fee. Comcast does not offer equipment separate from service fees.

□□First Cable Card is provided without charge. CableCard enables use of commercially available converter box, *i.e.*, "navigation device," for unidirectional cable service. (Electronic program guide, video-on-demand, and pay-per-view cannot be accessed.)
Source: Montgomery County Office of Cable and Communications, using Cable Rate Card Information as of March, 2012

Table 5 further shows that the equipment rental market is skewed to the benefit of the operator rather than the consumer. Should a piece of equipment be damaged, or not returned, a significant fee will be charged to the consumer. Without a retail market for the devices, it is impossible to know how much profit is built into this charge. The wireline provider equipment charges in Table 5 are much higher than the reference retail prices for comparable DBS equipment.

Table 5

**2012 Retail Rates for DBS Equipment vs.
Cable Rates for Unreturned/Damaged Equipment**

	CableCard	Digital Adapter	HD Converter	HD-DVR	SD-DVR	SD-STB
DirecTV			$99	$199	$99	$69
Comcast	Actual Replacement Cost					
RCN*	$55	$33.60	$300	$550	$80	
Verizon	$100	$175	$350	$550	$475	$240

*Plus taxes
Source: Montgomery County Office of Cable and Communications, using Cable Rate Card Information as of March, 2012

Moreover, these cable charges are fixed or require payment of the replacement cost. No consideration is given to the fact that the consumer may have already in effect paid for the equipment many times over in rental fees. Nor do they take into account that the equipment itself may have been in service for a number of years, with little useful life or value remaining. Thus, the operator is able to benefit in two ways from its captive rental market. A subscriber may pay many multiples of the cost of the equipment in rental fees over the years. And, should the equipment ever be damaged or unreturned, the subscriber pays for the replacement equipment as well.[68]

c. The Commission Should Mandate an Interim Sale Option for Customer Equipment or Endorse Local Initiatives

An issue that the County has been urging the Commission to act on is to improve the lot of consumers concerning the equipment they need to view MVPD service. So long as subscribers are captive renters – they can only rent equipment and then only from the operators – and each operator is free to charge whatever rate it chooses for the equipment, subscribers will suffer oligopolistic pricing behavior. But this need not be the case; the Commission could mandate a purchase option for subscriber equipment.[69] Indeed other pricing models available in the communications industry involve a purchase option. Wireline phone subscribers can buy their equipment. Wireless phone subscribers can buy their cell phones, or get them at a reduced price with a longer term service contract with a specific provider. Broadband subscribers can purchase their own cable modem instead of renting one. Satellite subscribers can purchase their own equipment.[70]

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[68] Commission rules took effect on August 1, 2011 to ensure that cable operators do not subsidize the costs of leased set-top boxes with service fees paid by consumers who use navigation devices that they own to receive video services provided by their cable operator. This rule allows customers to receive a credit. However, the Commission should also investigate the cable operators' policies on customer-owned equipment reimbursements, and whether these actually match the rental fees that are charged for operator-supplied equipment.

[69] *See* footnote 6; *see also* All Vid Inquiry; Comments of Montgomery County, Maryland (July 13, 2010).

[70] The County notes that DBS subscribers must purchase equipment and then pay additional "lease" fees of $5 to $10 per converter box per month.

NCTA revealed to the Commission more than two years ago its proposed "Consumer Principles" that expressly support a sale option,[71] namely:

- Consumers should have the option to purchase video devices at retail that can access their multichannel provider's video services without a set-top box supplied by that provider.
- Consumers should also have the option to purchase video devices at retail that can access any multichannel provider's video services through an interface solution offered by that provider.

In the County's view, these principles are generally consistent with, and therefore the NCTA should not oppose, the County's request that the Commission mandate a sale option for existing video devices, *i.e.* existing set top boxes which often are only available for lease from the MVPD to subscribers. In fact, there is no reason for NCTA members to wait for Commission action. They can put their commitment into action by voluntarily introducing a sale option immediately.

In an *ex parte* filing in the *All Vid* proceeding, the cable industry lauded the fact that consumers can buy all sorts of equipment to access video content.[72] But the conclusion drawn from these advances in technology "for sale" is rather astonishing. NCTA stated: "The fact that tens of millions of tablets, game consoles, Internet-connected TVs, and other smart, video-capable devices have been sold and will be sold means that the Commission no longer needs to "create" a retail market for navigation devices."[73] In light of the above, the *status quo* on equipment rentals is not benefiting consumers. Thus, once again the County urges the

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[71] *In the Matter of Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, MB Docket No. 10-91, CS Docket 97-80, PP Docket 00-67, FCC 10-60 (rel. April 21, 2010) Comments of the National Cable and Telecommunications Association (filed July 13, 2010) at 2-6, 14, 21-24, Exhibit A.

[72] Letter from K. McSlarrow to J. Genachowski dated January 26, 2011.

[73] *Id*. at 3

Commission to take action to mandate a purchase option for equipment, or at a minimum state publicly that it supports such efforts by other jurisdictions.

2. The County's Experience with Quality of Video Services is Similar to Elsewhere

Like other consumers industry-wide, Montgomery County residents have seen more programming channels added to their video services over the years. Recent customer survey data suggests that Comcast subscribers are generally satisfied with the number and types of programming available to them, but not the prices for services, which may suggest that consumers are not satisfied with the choices MVPDs have made in terms of available channels and price.

3. The County's Experience with New Services is Similar to Elsewhere

Like other consumers industry-wide, Montgomery County residents have seen more services being offered but the County has no independent analysis of whether these were offered in response to competition or due to technological and other advancements.

4. Improvements in Customer Service Have Been Driven As Much or More By Regulatory Intervention As By Competition

The Commission does not articulate measures for gauging whether there have been improvements in customer service, but the County is actively engaged in consumer issues and has developed some of its own. County data on the total number of consumer complaints and issues generated by the complaints is summarized in Table 6 below.

TABLE 6

YEAR	TOTAL COMPLAINTS	TOTAL ISSUES GENERATED BY COMPLAINTS
2003	1342	1855
2004	1015	1373
2005	2125	4472
2006*	1500	3059
2007^	1723	3301
2008^	1629	2970
2009^	1490	2236
2010^	1228	1761
2011^	1179	1566
2012	739	968

*Includes Comcast and RCN. Prior years were only Comcast.
^Includes Comcast, RCN and Verizon.

Table 7 demonstrates several possible lessons about the impacts of competition on customer service. The average number of complaints in the first two years of data (when Comcast was the only wireline MVPD) was 1179 and the average number of issues generated by the complaints was 1614. Complaints and issues generated spiked dramatically just before new competitors entered the market in 2005 (complaints more than doubled and issues generated more than tripled in 2005), and the figures remained very high through 2009 as the new entrants rolled out their service in the County. In addition to new entrants, several new service offerings were also rolled out during this period including voice over IP service. The complaints and issues generated in the most recent two years of data (when all three wireline MVPDs have become more established in the marketplace) are 1204 and 1664, respectively. The total number of subscribers in the County increased by about 23 percent from the end of 2003 to the end of 2011. Thus, the complaints data suggests that as competition enters the market, customer service actually worsens, but as time goes on, some improvements can occur. Some of this improvement may be in response to competition, but the County's experience has been that its active participation working with the providers to address systemic problems also is a major factor in improving customer service.

In the County, the most common category of complaints received from subscribers concerns billing and marketing problems, as seen in Table 8. This generates a great deal of subscriber frustration concerns promotional offers, a marketing practice which the industry continues to point to as a mark of a competitive marketplace. For consumers, the experience is not so positive. Often, consumers sign up for new service at a promotion rate and do not clearly understand the terms and conditions of the offer. Subscribers often feel that companies or their customer service representatives are not held accountable for providing misleading or incorrect information at the point of sale. The County has worked with the providers to improve billing and marketing disclosures but this remains a persistent problem as evidenced in Table 8 below

Table 7: Types of Complaints

Fiscal Year	Billing	Internet Service	Reception	Other*
2003	52.7%	24.4%	22.7%	0.2%
2004	39.0%	19.7%	26.6%	14.7%
2005	24.1%	38.6%	33.8%	3.5%
2006	26.6%	29.1%	35.3%	9.0%
2007	40.3%	22.5%	27.7%	9.5%
2008	39.1%	24.3%	23.2%	13.4%
2009	39.9%	17.3%	22.8%	20.0%
2010	40.3%	21.9%	26.3%	11.5%
2011	54.1%	21.8%	23.9%	0.2%
2012	48.9%	11.8%	13.6%	25.7%

* Other complaints typically involve matters such as lawn restoration, damaged equipment, property damage, cable plant damage, and the like.

The chief complaint of subscribers, however, is that providers do not take their complaints seriously.[74] This manifests itself in several ways:

- It takes too long for complaints to be resolved. Subscribers often report having to make multiple telephone calls before matters are resolved.
- Subscribers express frustration with the inability of cable companies to diagnose and correct problems in the first service call.
- Cable companies will only schedule service calls for a specific address; even when a subscriber has checked with neighbors and concluded that problem affects a broader area, customer service representatives have no authority to take further action.
- When complaints are "resolved," many subscribers remain dissatisfied with the outcome. In both 2008 and 2009, over 20 percent of subscribers surveyed report that they were not satisfied with the resolution of specific complaints they raised with their providers.
- Following major weather events, at least one provider did not provide estimates of when service would be restored and did not readily provide credits for service outages.

While there have been some improvements in customer service, there are some areas in which complaints are persistently high, and the lack of effective rules is not being adequately remedied by market forces.

IV. LOCAL COMMUNITY MEDIA CHANNELS SERVE IMPORTANT LOCALISM GOALS OF THE COMMISSION AND SHOULD NOT BE DISCARDED IN THE NAME OF PROMOTING COMPETITION

A. LOCALISM IS A FUNDAMENTAL COMMISSION POLICY BUT COMMISSION EFFORTS TO STRENGTH LOCALISM HAVE WANED

The Fifteenth NOI is not the first time that the Commission has inquired about local programming such as that provided by local community media channels. The Commission has recognized for several years now that a foundational element of regulatory responsibilities, localism, is not meeting community needs and is threatened. The critical importance of localism

[74] When a complaint is escalated by the County it is usually resolved in less than five days. However, it is common for the problem to go on for weeks or months before the County is asked to get involved.

was underscored in a 2008 report on broadcast localism issued by the Commission, in which it was observed:

> …the concept of creating and maintaining a system of radio and television stations that offer programming responsive to the unique needs and issues facing the communities that they are licensed to serve is the centerpiece of the Commission's regulation of the broadcast industry. The fact that we have received over 83,000 comments and heard from hundreds of participants at the six field hearings that we have conducted throughout the country eloquently demonstrates the importance with which the public views the concept of localism: the obligation of stations to provide service vital to their communities. In particular, the often passionate testimony that we received from the "open microphone" participants at these hearings, generally private citizens who stayed until well into the night often and came a long way to make known their carefully crafted observations, underscores the significance to them of this issue.[75]

As a result of that proceeding the Commission proposed various rule changes to strengthen localism requirements, but never issued final rules.

Two years later, the importance of localism was reiterated when the Commission launched the "Future of Media" project. That Notice for that project quoted the findings of several bipartisan studies that expressed deep concern about trends and threats to the sustainability and quality of local media, and in launching the project the Notice stated: "Government policy should at a minimum avoid hindering innovation and, when appropriate, should facilitate a vibrant media. It should do so in furtherance of some of the longstanding, public interest goals of national media policy: diversity, competition, localism, access to emergency and public safety information,' and the availability of service throughout the country."[76] Among the topics on which the Commission sought information were multiple questions about noncommercial and public media, including local community media

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[75] *In the Matter of Broadcast Localism (MB Docket No. 04-233), Report on Broadcast Localism and Notice of Proposed Rulemaking* (rel. January 24, 2008), ¶ 142.

[76] *FCC Launches Examination of the Future of Media and Information Needs of Communities In A Digital Age* (DA 10-100), GN Docket No. 10-25 (rel. January 21, 2010) at 2-3.

programming.[77] According to the Notice, the Future of Media project was "to produce a report providing a clear, precise assessment of the current media landscape, analyze policy options and, as appropriate, make policy recommendations to the FCC, other government entities, and other parties."[78] To date, no report has been issued. The County urges the Commission to restart its initiatives in this important policy area.

B. THE PUBLIC'S INTEREST IN LOCAL PROGRAMMING REMAINS STRONG AND THE COUNTY'S LOCAL COMMUNITY MEDIA CHANNELS ARE HELPING TO MEET THE PUBLIC'S NEED

While Commission activity has waned, the imperative to take action to strengthen localism remains evident. In a recent telephone survey of County residents,[79] 73.2 percent of respondents stated that it was very important or important to have television channels that feature programs produced by local government, educational organizations, and residents about issues of interest to the community. In comments filed in this proceeding, Verizon recognized the benefit of Verizon's own local programming in on its FiOS 1 channel available in New York City and the Washington DC area, which "provides subscribers with local and hyper-local content, including local news, events, weather, traffic, and sports…unique, locally-produced programming such as …Push Pause, featuring local stories shot by citizen journalists, in Washington, DC."[80] The comments of the National Association of Broadcasters also emphasize the importance of localism and detail their efforts at improving local programming and meeting

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[77] *Localism*, at 6-8.

[78] *Localism*, at 1.

[79] Telephone survey conducted between May 16 and May 23, 2012 by Group W for Montgomery County. 600 completed interviews were completed from randomly selected residential and cellular telephones. The survey has a margin of error of 4 percent and a 95 percent level of confidence.

[80] See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Comments of Verizon (filed September 10, 2012) at 8. (Verizon 2012 NOI Comments).
http://apps.fcc.gov/ecfs/document/view?id=7022010980

their obligation to serve the community.[81] At the same time, MVPDs are urging the Commission to abandon syndicated exclusivity and non-duplication rules, which may result in less protection of local content provided by broadcast stations.[82]

The County's local community media channels are playing an important role in filling the need for local content. In the same year as the Future of Media project was launched, an academic study of the content of local commercial channel news shows in the Los Angeles area showed that local news programs actually spend very little time on local news stories.[83] And, the daily schedules of local commercial channels in the Washington DC are list very little local programming content outside of local news shows in the mornings and evenings.[84] By contrast, the daily schedule for Montgomery County's flagship channel, "County Cable Montgomery" is made up almost exclusively of local programming content.[85] Local community media channels are the last bastion of truly local programming.

C. THERE IS NO EVIDENCE THAT REMOVING PUBLIC INTEREST OBLIGATIONS TO PROMOTE AND PROTECT LOCALISM WOULD INCREASE VIDEO COMPETITION

Given the important role that local community media channels are playing in meeting the need for local content, the County is concerned that that the Commission's request for information about these channels in this proceeding comes in a section addressing "regulations

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[81] NAB Comments at 6-7.

[82] Verizon Comments at 17; DirecTV Comments at 19.

[83] Martin Kaplan, Ph.D. and Matthew Hale, Ph.D., "LOCAL TV NEWS IN THE LOS ANGELES MEDIA MARKET: Are Stations Serving the Public Interest?" USC Annenberg School, The Norman Lear Center, March 2010 (available at http://www.learcenter.org/pdf/LANews2010.pdf) (last accessed October 10, 2012)

[84] See for e.g., ABC, http://www.abc7dc.com/onabc7/?d=8/10/2010; CBS, http://www.wusa9.com/life/programming/local/default.aspx; FOX, http://www.myfoxdc.com/subindex/entertainment/tv_listings; NBC, http://www.nbcwashington.com/station/tv-listings/tv-listings-wash.html.

[85] See the daily programming schedule on the CCM website. http://www.montgomerycountymd.gov/ccmtmpl.asp?url=/content/cableOffice/CCM/schedule.asp.

affecting entry and rivalry" in which the Commission seeks comments on actions it could take to facilitate MVPD entry and rivalry.[86] The implication is that some regulatory requirements are impediments that the Commission should consider removing. Deregulation would be a serious mistake.

The Commission cannot deregulate public interest obligations in the name of promoting competition without a factual basis for doing so. There is absolutely no evidence to suggest that public interest obligations of MVPDs requiring them to support local community media channels are serving as a barrier to competitive entry. To the extent PEG can be considered a regulatory "burden" at all, it is one that has been reducing relatively speaking, as local community media channels as a percentage of available programming channels is shrinking rapidly.[87] As the Commission observed in its First Video Competition Report, "[f]rom a public policy perspective, not all impediments [to MVPD entry], however, are necessarily barriers to entry that require some type of government intervention or remediation. For purposes of this Report, costs borne by entrants but not incumbents that have adverse affects on consumer welfare are defined as policy-relevant barriers to entry."[88] (citations omitted) The public interest obligation to support local community media applies to all wireline MVPDs. As noted, the County has eleven such channels and this fact did not hinder competitive entry by two wireline MVPDs in addition to the incumbent.

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[86] Fifteenth NOI, ¶¶ 23 and 24.

[87] DBS operators are required to reserve four percent of their channel capacity for noncommercial programming of an educational or informational nature. 47 C.F.R. § 25.701 and PEG channels can be required under the Cable Act to meet the needs and interests of the franchising community. If one assumes that the DBS reserve standard was created to mirror the capacity set aside for public interest programming at the behest of local franchising authorities at the time the Commission established the DBS reserve standard, it is clear that, unlike the DBS public interest percentage set asides, the required number of PEG channels has not kept pace with growth in channel capacity on cable systems.

[88] 9 FCC Rcd 7442, 7561 (FCC 1994).

1. MVPD Benefits Should Not Be Decoupled From Public Interest Obligations

As the Commission considers ways to spur the continued development of the OVD market, the County reiterates its views, expressed in the SkyAngel proceeding,[89] that while the County welcomes all potential new entrants and new technologies, there are principles which must govern decisions on regulatory benefits and public interest obligations. These include:

It is important to recognize that the Communications Act ties benefits to assumption of obligations. The Commission cannot extend benefits to OVDs without requiring OVDs to accept the obligations that fall on MVPDs. The Commission should reject the suggestion of Verizon that the rules not apply to an MVPD when the MVPD is offering an OVD service. Likewise, any lines the FCC draws must be clear enough so that those lines do not allow cable operators to retain benefits while escaping their own regulatory obligations.[90] Obligations and benefits go hand in hand: they are balanced to ensure that investment and fair competition is encouraged, and that other goals of the Communications Act, including accessibility of information to persons with disabilities and the widespread availability of information from a variety of sources, are advanced.

As the Commission is aware, not that long ago Comcast announced that it would be entering into an arrangement with XBox that would allow for delivery of video programming to the XBox via a "private" Internet – and that the video programming delivered would not be

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[89] *In the Matter of Digital Broadcasting OVS Certification to Operate an Open Video System* Memorandum Opinion and Order (rel. June 3, 2011) at ¶ 3.

[90] It is fair to assess whether an OVD fits within the definition of MVPD by asking whether it or comparable providers could be expected to actually satisfy the obligations imposed on MVPDs in most situations (as opposed to seeking exemptions from them). Otherwise, the Commission would be encouraging all providers to adopt transmission technologies that avoid important public obligations.

subject to the data limits that apply to other information delivered via the Internet.[91] In its comments in this proceeding, Verizon discusses its joint venture with RedBox and urges the Commission not to apply MVPD rules to its over the top service.[92] Enormous injury can follow if cable operators can avoid obligations under the Cable Act by using a slightly different technology to deliver the *same* type of programming via the *same* cable system, while maintaining the same control over subscribers. In considering these issues, the Commission needs to avoid creation of regulatory loopholes that do little to enhance competition, but much to harm the public interest.[93]

The Cable Act is technologically neutral: obligations generally do not depend on whether an entity uses an IP platform, some other digital platform, or an analog platform to deliver services; nor do they depend on whether the video is switched or not switched. The technology-neutral nature of the Cable Act is reflected in 47 U.S.C. § 544(e), providing that no franchising authority may "restrict a cable system's use of any type of subscriber equipment or any transmission technology." As a system is not a cable system unless it is designed to provide services which include "video programming,"[94] this provision necessarily implies that video programming can be delivered via a variety of platforms – IP, analog, or otherwise. Moreover, the Commission generally has not distinguished between cable systems and non-cable systems

[91] Werner, Tony, Xfinity On Demand – Coming Soon to an Xbox 360 Near You, Comcast Voices (October 5, 2011) (last accessed June 12, 2012 at 10:05 a.m.) http://blog.comcast.com/2011/10/xfinity-on-demand-coming-soon-to-an-xbox-360-near-you.html; Comcast Customers Skip Data Caps as Xbox Service Becomes Complaint Target in Net Neutrality Debate, MSP News (March 27, 2012) (last accessed June 12, 2012; 10:05 a.m.) http://www.mspnews.com/news/2012/03/27/6216269.htm.

[92] Verizon at 24-25.

[93] Classification of an OVD as an MVPD, for example, could affect the determination of whether communities are subject to "effective competition" under 47 U.S.C. § 543(l)(1); it would be harmful to consumers to treat OVDs as MVPDs if their offerings are less accessible or other consumer protections are lacking.

[94] 47 U.S.C. § 522(7).

based on delivery technology alone. The Commission found that an entity with, *inter alia,* no facilities in the rights of way, and providing video services to customers using facilities open to others and available pursuant to tariff under a carrier-user relationship, was not subject to cable franchising obligations, because the entity was not the cable operator of a cable system.[95] Technology was not determinative. Similarly, the Commission has recognized a difference between an "on-demand" system and "linear programming channels."[96] The latter—which involve delivery of pre-scheduled programs that function, and can be accessed like traditional television channels without the use of the sort of multi-menu applications that characterize on-demand programming—can be categorized as "video programming channels." It is not the technology used (IP, analog, or other digital) that distinguishes the two. It is the fundamental operational differences from the viewer's perspective. The Commission should continue to take a technology-neutral approach when evaluating new entrants.

V. THE COMMISSION CAN AND SHOULD TAKE ACTIONS TO PROMOTE COMPETITION AND IMPROVE CONSUMER WELFARE

A. THE COMMISSION SHOULD MANDATE AN INTERIM SALE OPTION FOR CUSTOMER EQUIPMENT OR ENDORSE LOCAL INITIATIVES

As discussed earlier, one step the Commission could take to promote competition is to mandate an interim purchase option for all subscriber equipment, just as is available to subscribers to wireline phone service, broadband service, DBS, and wireless phone service.[97]

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[95] *In the Matter of Entertainment Connections, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 14277 (1998), *aff'd, City of Chicago v. FCC*, 199 F.3d 424 (7th Cir. 1999), *cert. denied* (2000); *In the Matter of Telephone Company-Cable Television Cross-Ownership Rules,* Memorandum Opinion and Order on Reconstruction, 7 FCC Rcd 5069 (1993); *aff'd, National Cable Television Assoc., Inc. v. FCC*, 33 F.3d 66 (D.C. Cir. 1994) (*"VDT Proceedings"*).

[96] The term "linear programming" is generally understood to refer to video programming that is prescheduled by the programming provider, i.e., channels other than on-demand programming. *FCC Enforcement Advisory/Cablecards*, Enforcement Advisory No. 2011-09 26 FCC Rcd 11223 (2011).

[97] See supra at 33.

The County urges the Commission to take action to mandate a purchase option for equipment, or at a minimum state publicly that it supports such efforts by other jurisdictions.

B. <u>THE COMMISSION'S CUSTOMER SERVICE RULES SHOULD BE UPDATED</u>

In prior years, the County asked the Commission to update consumer protection standards, and remarked on lack of consumer protection standards for online video and inadequate consumer protection for Internet service. In the comments in this proceeding, a few providers have asked for some revisions to the customer service rules.[98]

The County suggests that the Commission has a duty to take a more comprehensive approach to its review. The Commission's customer service rule took effect on July 1, 1993, and except for minor amendments, has remained unchanged since.[99] The industry, however, has evolved dramatically since 1993 and the rule is now very much out of date – it does not address the kinds of problems that franchising authorities and subscribers typically face today. If customer service issues will be addressed under a model in which national standards are adopted and enforced locally, it is imperative that the national standards keep up with national trends. It is disheartening that the Commission has devoted significant time to issuing effective competition orders but has put very little time into updating the national standards that protect consumers, particularly given that the Commission collects a regulatory fee from those same consumers. The Commission should initiate a proceeding to reexamine the customer service rules and develop new standards that actually address current problems, and provide the flexibility to address new problems as they arise. Some areas of particular need are described below.

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[98] Verizon Comments at 20; CenturyLink Comments at 7-8.

[99] 47 C.F.R. § 76.309.

Complaint Resolution Process. Consumer dissatisfaction with customer service in the industry is well known, yet the Commission's rules say nothing about how effective or efficient an operator's complaint resolution process should be. These are the issues that really matter: Why did the subscriber have to call in the first place? Was the complaint resolved in a single call? And did the subscriber agree that the matter was properly resolved?

Telephone Answering Standards. 47 C.F.R. § 76.309(c)(1) addresses telephone answering standards, but only in terms of the problems subscribers complained about in 1993, before the wide-spread use of large regional or national call centers. The rule requires company representatives to be available during normal business hours, permits after hours calls to be answered by an answering machine, requires the phone to be answered within thirty seconds, and specifies that customers may receive a busy signal no more than three percent of the time. Operators can and do easily meet these standards today by using any automatic response unit. But that has given rise to different problems for consumers. Customer complaints today have to do with cumbersome and confusing call answering menus, and the inability to reach live customer service representatives easily. Technology has advanced, but the Commission's rules have not.

Refunds and Credits. 47 C.F.R. § 76.309(c)(3) purports to address communications between cable operators and subscribers, but in fact it merely sets maximum time limits on when refunds and credits must be made. The rule is routinely breached. Refunds take six to eight weeks to receive, and required credits are often not made. Operators routinely state that refunds must be issued by check cut from a separate corporate entity. In addition, subscribers who pay by automatic electronic debit often cannot receive refunds using the same automated process. Further, subscribers are very much concerned with billing errors, and the process for their billing complaints to be resolved, but the Commission's rule is entirely silent on that point. As shown earlier in Table 6, almost 50 percent of subscriber complaints in the County concern billing and marketing. Cable operators often continue to bill even after an account has been disconnected, and automatic payments continue to be deducted from subscribers' bank accounts. Neither one of these problems is addressed by the current rule.

Promotional Offers. The Commission's rules do not require the cable operator to provide any information in writing and often subscribers are provided the promotional flyer as a substitute for a more adequate explanation of the offer. One possible solution would be for the Commission to develop a standard format and minimum content requirements for all offers made by providers, similar to the standard terms required to be disclosed in credit card promotional offers. If terms and conditions were fully and clearly disclosed, using the same format, subscribers would be better able to compare and evaluate offers.

Enforcement Mechanisms. The Commission's standards only apply if expressly adopted by a community, and they include no enforcement mechanism. The existence of the standards allows operators to treat them as the default provision in any local franchise but consumers receive little benefits when communities adopt them. The overall effect of the Commission's rules is that customer service in most communities is essentially unregulated.

Local Regulation of Internet Customer Service Issues. From the consumer's perspective, these services are bought as a bundle but the customer service complaints are not handled by a single entity. Video complaints are handled by the local franchising authority; telephone issues may be handled by the state public utility commission, and complaints about Internet service tend to fall through the cracks, with some issues addressed by federal authorities, but most complaints being made to local officials.

Section 632 of the Communications Act permits the County to establish customer service standards pertaining to a cable operators' Internet access service, because the statute, by its terms, is not limited to video service.

Further, the County would suggest that until the Commission acts to protect consumers of Internet service, or in the alternative recognizes a local community's ability to do so, the subscribers of OVD services will suffer the same challenges as traditional cable subscribers. It would be entirely logical to allow local governments to handle Internet customer, as well as OVD subscriber complaints.

Effective federal regulation – or federal regulation that permits effective local regulation – would create an environment in which a certain acceptable level of customer service would be built into the system. If specific and effective standards were required by law, operators would find it much more difficult to justify cutting back in those areas, simply because the failure to comply would be a violation of the law. This would also benefit operators in dealing with pressure from investors, since investment in meeting the standards could be justified in the same way.

C. THE COMMISSION SHOULD REQUIRE LOCAL COMMUNITY MEDIA CHANNEL INFORMATION ON THE INTERACTIVE PROGRAMMING GUIDE

In the County's experience, operators have not put their technological and service delivery advances to work to fully benefit local community media programming. A prime example is the Electronic Program Guide which has become the "go to" method for seeing what's on. Consumers don't surf channels, they surf the program guide. As they surf the guide's listing of commercial channels they are provided with detailed information about the program, the episode, etc. Not so for local community media channels; the program guide descriptor often is limited to "local programming."

In a recent telephone survey of County residents,[100] 75.5 percent of respondents stated that they were very interested or somewhat interested in on-screen schedule of local programs. Yet not all MVPDs include this information on their program guides.[101] In a separate survey of current cable subscribers,[102] 63.4 percent always or frequently use the on-screen program guide to decide what to watch. Thus, although the majority of survey respondents want local on-screen program guide information about local channels, and use on-screen program guides to decide what to watch, some providers make it impossible for PEG operators to effectively communicate this information to MVPD subscribers about local PEG channels. Moreover, by denying this information to subscribers, viewership is inhibited, thereby reducing the value of the substantial investments in local community programming being made by the local jurisdictions. Thus, the County urges the Commission to consider adopting a rule mandating MVPDs to treat local community media channels the same as commercial channels on their programming guides.

VI. CONCLUSIONS

Nearly 20 years after the Commission's first report on video competition, there are signs of progress, but there remains work to be done to deliver on the promises made to consumers.

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[100] Telephone survey conducted between May 16 and May 23, 2012 by Group W for Montgomery County. 600 completed interviews were completed from randomly selected residential and cellular telephones. The survey has a margin of error of 4 percent and a 95 percent level of confidence.

[101] The County has been trying to address this problem with Verizon. See attached letter. Exhibit A.

[102] Telephone survey conducted between May 2 and May 16, 2012 by Group W for Montgomery County. 600 completed interviews of current and former (within 3 years of interview date) Comcast subscribers were completed from randomly selected residential and cellular telephones. The survey has a margin of error of 4 percent and a 95 percent level of confidence.

The County urges the Commission to take action in the areas identified and to remain vigilant as new market developments threaten to undermine the achievements that have been made to date.

Respectfully submitted,

Harash (Sonny) Segal Chief Information Officer & Director Dieter Klinger Chief Operating Officer Department of Technology Services Montgomery County, Maryland 101 Monroe Street, 13th Floor Rockville, MD 20850 Mitsuko R. Herrera, Cable & Broadband Communications Administrator Marjorie L. Williams, Franchise Manager Montgomery County, Maryland Office of Cable and Broadband Services 100 Maryland Avenue, Suite 250 Rockville, MD 20850	Gail A. Karish Best Best & Krieger LLP 3500 Porsche Way, Suite 200 Ontario, CA 91764 Telephone: (909) 989-8584 Fax: (909) 944-1441 *Counsel for Montgomery County, Maryland*

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EXHIBIT A

DEPARTMENT OF TECHNOLOGY SERVICES

Isiah Leggett
County Executive

Harash (Sonny) Segal
Chief Information Office

September 21, 2012

Mr. Darian E. Gill
FiOS TV Franchise Manager
Franchise Management & Acquisition
140 West Street, 22nd Floor
New York, NY 10007
Delivered via email

Re: Request for Additional Information Concerning Verizon's Failure to Carry Local PEG Programming Information On Verizon's Interactive On-Screen Program Guide – Response Due October 31, 2012

Dear Mr. Gill:

The County is concerned about Verizon's ongoing failure to carry PEG programming information on Verizon's Interactive On-Screen Program Guide. This failure is detrimental to subscribers, the County and Participating Municipalities, and is in violation of Verizon's franchise obligations. The County, including elected members of the Montgomery County Council, regulatory staff, and community members of the County's Cable Communications Advisory Commission, has raised this concern with Verizon several times over the years, and Verizon has repeatedly stated that it was working on a fix for the problem. In our last written communication from Verizon on this issue, on August 30, 2011, Verizon informed the County by e-mail that Verizon considered a fix to be "infeasible" at this time. In subsequent meetings, Verizon representatives have acknowledged the County's concerns and discussed technical aspects of the Verizon cable system and the Interactive On-Screen Program Guide, but have failed to offer either a solution or a timetable to resolve this issue. The County finds that Verizon's response is inadequate and unacceptable.

In order to resolve this ongoing issue, the County intends to conduct a full investigation of Verizon's failure to comply with its contractual obligations to the County and hereby requests that Verizon promptly provide any and all information, records and documents necessary for the County Staff to fully investigate Verizon's failure to carry local PEG programming information on Verizon's Interactive On-Screen Program Guide, including the information itemized in this letter. This request is made pursuant to Section 9.13.7 of the Cable Television Franchise

Office of Cable and Broadband Services
100 Maryland Avenue, Suite 250, Rockville, Maryland 20850
240 773-8111 FAX 240 777-3770

Agreement between the County and Verizon dated November 28, 2006 ("Franchise Agreement"). ***The requested information must be provided to the County by October 31, 2012.*** ***Failure to provide full and complete information in a timely manner may result in enforcement action by the County.***

Background

The County and Participating Municipalities have 11 local public, educational, and governmental access (PEG) channels for which they collectively invest over $12 million annually for operations and equipment. These channels provide nearly 10,000 hours of first run programming each year, of which, nearly 2,500 hours are locally produced. This local programming includes coverage of legislative meetings of County and City Councils, Board of Education meetings, emergency preparedness and public health and safety informational programming, as well as local community and cultural programming. The County's PEG programming has won numerous awards, including Emmy, Telly, National Association of Telecommunications Officers and Advisors Government Programming Access, Alliance for Community Media, Nova, Savvy and Communicator Awards.

Verizon's Interactive On-Screen Program Guide, however, currently does not provide Verizon subscribers with any identifying information about these award-winning local PEG channels or the important and information local programming carried on them. Basic information such as the names of the channels, titles of the programs on these channels, and information about these local PEG programs does not appear on Verizon's Interactive On-Screen Program Guide. A Verizon subscriber cannot use the Interactive On-Screen Program Guide to "see what's on" any PEG channel at a particular time. Nor may a subscriber use the full digital video recorder (DVR) capability to schedule a recording of a local PEG program.

Verizon's lack of information about local PEG channel programming on its Interactive On-Screen Program Guide is anomalous in two ways.

First, Verizon treats these local PEG channels differently than it treats other channels on its cable system, including its own local programming channel (FiOS 1). Verizon provides detailed programming information for its commercial and non-commercial channels (except local PEG) through its Interactive On-Screen Program Guide. Subscribers may use the Interactive On-Screen Program Guide and its features to perform various functions including: (1) to find the name of all other commercial and non-commercial channels; (2) to find additional information about the programs being carried by those channels, including future air dates of programs; (3) to record upcoming airings of a program or of an entire series of the program using the remote control, if the subscriber has a DVR; and (4) to obtain recommendations for programs similar to the one they are viewing.

Second, Verizon treats the PEG channels differently than other cable providers serving County residents. In contrast to Verizon's treatment of local PEG channels, both Comcast and RCN provide channel and program information for local PEG channels and programs on their Interactive On-Screen Program Guides.

Verizon is Causing Harm to Subscribers, the County and Participating Municipalities

This anomalous of local PEG channels treatment harms subscribers, the County, and Participating Municipalities.

Verizon's Interactive On-Screen Program Guide's lack of PEG channel programming information harms Verizon subscribers by depriving them of information about local programming that they strongly desire to have. In a recent telephone survey of County residents,[1] 73.2 percent of respondents stated that it was very important or important to have television channels that feature programs produced by local government, educational organizations, and residents about issues of interest to the community and ***75.5 percent of respondents stated that they were very interested or somewhat interested in an on-screen schedule of local programs***.

In comments recently filed with the FCC, Verizon itself recognized the benefit to subscribers of *Verizon's own local programming* in the Washington DC area:

> In addition to providing a platform on which other providers can deliver their programming, Verizon also provides its FiOS 1 channel in the New York City and Washington, DC regions. FiOS 1 provides subscribers with local and hyper-local content, including local news, events, weather, traffic, and sports. FiOS 1 also offers unique, locally-produced programming such as …Push Pause, featuring local stories shot by citizen journalists, in Washington, DC.[2]

While Verizon *does* provide channel and program information for its FiOS 1 channel on the Interactive On-Screen Program Guide, Verizon *does not* provide similar information for other local PEG channels. To the detriment of subscribers, Verizon severely limits the ability of subscribers to find local PEG programming content produced by the County, Participating Municipalities, community journalists and local residents, or to become aware that the program they are watching was produced by those entities.

Furthermore, Verizon's failure to carry this information on its Interactive On-Screen Program Guide also harms the County and Participating Municipalities. It inhibits the ability of the County and Participating Municipalities to communicate effectively with residents. In a separate survey of current cable subscribers,[3] ***63.4 percent always or frequently use the on-***

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[1] Telephone survey conducted between May 16 and May 23, 2012 by Group W for Montgomery County. 600 completed interviews were completed from randomly selected residential and cellular telephones. The survey has a margin of error of 4 percent and a 95 percent level of confidence.

[2] See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Comments of Verizon (filed September 10, 2012) at 8. (Verizon 2012 NOI Comments). http://apps.fcc.gov/ecfs/document/view?id=7022010980

[3] Telephone survey conducted between May 2 and May 16, 2012 by Group W for Montgomery County. 600 completed interviews of current and former (within 3 years of interview date) Comcast subscribers were completed

screen program guide to decide what to watch. Thus, although the majority of survey respondents want local on-screen program guide information about local channels, and use on-screen program guides to decide what to watch, Verizon restricts the ability of County and Participating Municipalities to effectively communicate to Verizon subscribers information about the local program content carried on local PEG channels. Moreover, by denying this information to subscribers, viewership is likely inhibited, thereby reducing the value of the substantial investments in local PEG programming being made by the County, Participating Municipalities, community journalists, and residents.

Verizon is in Violation of its Franchise Obligations

1. Failure to Provide Interactive Functionality.

The Franchise Agreement requires that "[a]ll PEG channels shall have at a minimum the same bandwidth, signal quality, and *interactive functionality* as federal law may from time to time require for cable service channels."[4] (*emphasis added*) Verizon is not complying with this requirement. Verizon provides interactive functionality on its Interactive On-Screen Program Guide that, among other things, permits a subscriber to select and record programs on DVRs from other Verizon system commercial and non-commercial channels, but Verizon does not provide that same interactive functionality to the local PEG channels.

This omission is significant. In its Supplemental Notice of Inquiry for its 14th Annual Video Competition Report, the FCC recognized the critical importance of the interactive functionality of on-screen program guides as a source of information for viewers:

> … As interactive television has developed, the functionality of EPGs [electronic program guides] has evolved and they are now more commonly known as interactive program guides ("IPGs"). Since June 30, 2007, newspapers have been reducing or discontinuing their television programming listings, in part to reduce operating costs, and in light of continually changing program scheduling, the increased number of programming networks, and readers' access to listings over the Internet and via their MVPDs' IPGs. What role do IPGs play in consumers' viewing choices? How does the demise of TV program listings in newspapers impact the role of IPGs? Are IPGs now the primary source for viewers to obtain program listings? If so, how does this impact the market for the delivery of video programming? (citations omitted)[5]

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from randomly selected residential and cellular telephones. The survey has a margin of error of 4 percent and a 95 percent level of confidence.

[4] Franchise Agreement Section 6.7.6.

[5] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, 24 F.C.C.R. 4401, MB Docket No. 07-269 (released April 09, 2009) at ¶18 (Supplemental NOI).

Verizon, commenting in the same proceeding, touted the capabilities of its interactive media guide:

> The IP-based nature of the Home Media DVR allows Verizon to integrate the DVR with FiOS TV's innovative and interactive media guide (IMG), which also takes advantage of this technology *and enables customers to easily find and access content from TV listings*, VOD catalogs, recordings on their DVR, and their personal music and photos. Other features enabled by Verizon's IP-based system include remote DVR management (allowing subscribers to remotely control their DVRs online or through certain Verizon Wireless handsets), free games, a "What's Hot on FiOS TV" feature that provides information on the most-popular programs currently being watched in the region and the most popular VODs, a feature that allows consumers to pause live programming and then return after changing channels, and several different channel sorting options.[6] (*emphasis added*)

Moreover, in Verizon's response to the FCC's Notice of Inquiry for its 15th Annual Video Competition Report,[7] Verizon noted the importance of DVR service and indirectly the program content information and interactive functionality of its Interactive On-Screen Program Guide that makes this service valuable to subscribers:

> Verizon was also the first video provider to offer multi-room DVR service to its subscribers. With this service, subscribers can record a program in one room and watch it on any other set-top connected television in their home without the need for an additional DVR.
>
> …FiOS TV…also is increasingly freeing customers from the need to use a set top box at all to access FiOS TV content and service. In late 2010, Verizon introduced Flex View, which allows subscribers to select from more than 15,000 titles using any screen (TV, computer or mobile).[8]

Despite these comments, Verizon fails to provide this important interactive functionality for PEG channels. Subscribers cannot use the DVR features to record local PEG programming, much less, access this content on other screens throughout the house.

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[6] See Comments of Verizon at 8-9 (filed May 20, 2009) http://fjallfoss.fcc.gov/ecfs/document/view?id=6520216992

[7] *In The Matter Of Annual Assessment Of The Status Of Competition In The Market For The Delivery Of Video Programming*, MB Docket No. 12-203 (released July 20, 2012).

[8] See Verizon 2012 NOI Comments at 10-11.

2. Failure to Make PEG Channels Available and Without Additional Burden.

Verizon has the obligation under Section 6.1 of the Franchise Agreement to provide PEG channels and, pursuant to Section 6.6.1, to transmit them "so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels." Verizon is treating local PEG channels differently than other Basic Service Channels and is not making the same functionalities available to subscribers as it does for other Basic Service Channels.

The failure to provide basic programming information about the PEG channels on its Interactive On-Screen Program Guide is a failure to provide an integral component of the PEG channels themselves. Without this information, it is impossible for a subscriber to find desired PEG programming, to determine the name of the local PEG channel or program the viewer is watching, or to schedule recording or viewing of local PEG channel programming.

This discriminatory treatment of the local PEG channels imposes additional burdens on subscribers. Congress and the FCC have expressed the view that PEG programming should be available to all subscribers without additional burdens. PEG channels are designed to assure "access to the electronic media by people other than licensees or owners of those media."[9] Accordingly, when Congress amended the Cable Act in 1992, the House emphasized the importance of the channels, and that Congress intended for the channels to be viewable by every cable subscriber:

> PEG programming is delivered on channels set aside for community use in many cable systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge….PEG channels serve a substantial and compelling government interest in diversity, a free market of deans, and an informed and well-educated citizenry….Because of the interests served by PEG channels, the Committee believes that it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.[10]

Even members of the Committee who objected to the bill as reported agreed that it was essential that PEG channels be available to all subscribers: "Making over-the-air broadcast and PEG access channels available on a separate tier promotes the time-honored principle of localism."[11] Based in part on the concern that the channels be accessible to all, the House adopted language (included in the final legislation) that "requires cable operators to offer a basic service tier, consisting, at a minimum, of all broadcast signals carried on the cable system and public, educational, and governmental (PEG) access channels."[12]

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[9] H. R. Rep. No. 98-934, 98th Cong. 2d Sess. 1984 at 30.

[10] H.R. Rep. No. 102-628, 102nd Cong., 2nd Sess. 1992 at 85.

[11] *Id* at 183.

[12] *Id.* at 26-27.

In September of 2008 the FCC presented testimony to Congress expressing concern about the proposed digitization of PEG channels, in which it was stressed that "the purpose of the basic service tier" would be defeated if consumers were "[s]ubject[ ] . . . to additional burdens to watch their PEG channels."[13] Similar to the circumstance that was the subject of that testimony, Verizon's refusal to provide interactive on-screen program guide functionality to local PEG channels subjects subscribers to additional burdens to watch their local PEG channels.

Technical Solution

The County is aware that the system architecture used by Verizon is different from the system architectures used by other cable systems. Verizon has informed the County that Verizon uses its video hub office (VHO) facility in Silver Spring, MD to distribute cable programming to the Washington DC metro area and that Verizon inserts local PEG channels at its wire centers over an allocated number of channels reserved for local programming. Verizon uses central channel mapping from the Silver Spring VHO and, even though local PEG channel programming will vary by wire center, every home served by the Silver Spring VHO receives the same programming guide information. For VHO-wide channels, central channel mapping does not present an issue. For example, in every home served by the Silver Spring VHO, the local NBC affiliate appears as Channel 4 for SD and Channel 504 for HD with interactive program guide information. Verizon's Interactive On-Screen Program Guide, however, *does not* present information about the local PEG programming inserted at the wire center level. For example, in Fairfax County, Virginia, the unidentified local programming of the Fairfax Government Channel will be inserted at local wire centers and will appear on Channel 16 in Fairfax County. As the same time, in Montgomery County, the unidentified local programming of the Maryland Municipal League will be inserted and appear on Channel 16 in Montgomery County. So whereas the local PEG program may vary by wire center, in every home served the VHO, local PEG programming will have the generic "Local Programming" description appear as the *only* program information and the Verizon Interactive On-Screen Program Guide *will not* identify the channel name, program title, time of carriage, program description, or source of programming.

The County believes that could Verizon provide the necessary program guide information on its Interactive On-Screen Program Guide for local PEG channels. For example, Verizon could create a means to map its channels at the wire center level, which would enable Verizon to insert local programming information that varies between franchise areas but still uses the same local channels numbers allocated for local PEG programming by Verizon.

The County recognizes that Verizon may experience additional costs to include local PEG channel and program information on the Interactive On-Screen Program Guide. However, in light of the significant presence of Verizon in Montgomery County,[14] and the ongoing harms

[13] Testimony of Monica Shah Desai, Public, Educational, and Governmental (PEG) Access to Cable Television, Before the House Subcommittee on Financial Services and General Government (September 17, 2008).

[14] Verizon stated in its 2012 NOI Comments, at 4, that it nationally has a 32.6 percent penetration rate.

and franchise violations (as described above), the County believes that the cost for Verizon to implement a solution to resolve this issue is *de minimis* in comparison to the millions of dollars in cable revenues Verizon derives from the systems served by the Silver Spring VHO.

Specific Information Requested

In light of the multi-million dollar annual investment by Montgomery County in local PEG programming, the multi-million dollar annual cable revenues earned by Verizon from Montgomery County subscribers, and the importance of local PEG programming and interactive on-screen program guides to cable subscribers, the County is seeking specific technical information from Verizon to ascertain the financial and technical impact of providing local PEG programming information on its Interactive On-Screen Program Guide.

The County is hereby requesting that Verizon provide specific technical information, including but not limited to:

A. Technical issues which affect Verizon's ability to offer local PEG channel and program guide information on Verizon's Interactive On-Screen Program Guide.
    1. Please include a flow chart detailing how program listings are created and provided on Verizon's Interactive On-Screen Program Guide.
    2. Please include a block diagram indicating where program information is inserted into the Verizon network architecture.
    3. Please describe how information is forwarded to the set-top converters.

B. Please provide a technical explanation of alternatives that Verizon has considered and why Verizon concluded in its August 30, 2011 e-mail to the County that Verizon considered a fix to be "infeasible" at this time.

C. Additional technical studies that Verizon has conducted since August 30, 2011 and steps taken to provide a "fix" to offer local PEG channel information on Verizon's Interactive On-Screen Program Guide.

D. Technical solutions that would be necessary in Verizon's opinion to provide local PEG channel and program guide information on Verizon's Interactive On-Screen Program Guide and the financial or technical impact of implementing such solutions.

E. Technical viability and the financial impact of providing channel mapping and program guide information for the local PEG channels at the local wire center level instead of centrally from the Silver Spring VHO.

Please provide the requested information no later than October 31, 2012. Failure to do so may result in the application of liquidated damages (after any applicable cure period) per Franchise Agreement Section 13.7.4.2, as well as the application of liquidated damages for the violations of the Franchise Agreement discussed above per Sections 13.7.4.1 and/or 13.7.4.12.

Finally, as discussed in detail above, the County believes that Verizon has a legal obligation to provide local PEG channel interactive functionality, including meaningful program guide information and functionality, and to make local PEG channels available and without additional burden. It is indisputable that Verizon's failures in this regard are causing significant harms to subscribers, the County, and Participating Municipalities. In addition, Verizon has a separate obligation to negotiate in good faith proposals for additional PEG channel functionality pursuant to Section 6.7.6 of the Verizon franchise agreement.[15] Without waiving its legal arguments above, or legal rights, the County also makes the above information request pursuant to this portion of Section 6.7.6.

Thank you for your time and attention to this matter.

Sincerely,

Mitsuko R. Herrera
Cable & Broadband Communications Administrator
Montgomery County, Maryland

cc: Harash (Sonny) Segal, Director, Department of Technology Services
Marjorie Williams, Franchise Manager, Office of Cable & Broadband Services, Department of Technology Services
Clifford Royalty, Division Chief, Zoning, Land Use & Economic Development, Office of the County Attorney

[15] Section 6.7.6 states, in relevant part: "In the event the County or Participating Municipalities desire additional functionality for one or more of the channels set aside for PEG use for itself or for a Participating Municipality, the parties agree to negotiate in good faith, County proposals on behalf of itself or a Participating Municipality that would enable the affected channels to add the desired functionality."